

C/M/S/ Cameron McKenna

Business Criminal Litigation in Poland

Autumn 2008

Business Criminal Litigation

Welcome to the Autumn 2008 Business Criminal Litigation (BCL) Team brochure.

By observing the market and answering our clients' needs, we have been developing the Business Criminal Litigation Team, which advises on criminal law issues arising in connection with conducting business activity.

If mismanaged, such issues can turn into serious problems that threaten the good name of the company and its managers, undermine the employees' commitment, jeopardise the company's credibility and client's trust, and even halt the company's business entirely. We put a lot of effort into preventing this by conducting training for board members and employees on their rights and obligations when acting as witnesses, defendants and injured parties during criminal proceedings, developing anti-corruption compliance programmes, preventing criminal charges being raised against companies whose employees have circumvented their duties, and assisting advisors to U.S. companies providing training on FCPA issues in relation to Polish law.

BCL Team news

As the demand for our services is growing, we are happy to introduce you to Ms Irmina Kotiuk who joined us on 1 August 2008. Having previously worked for the Polish Office of the Committee for European Integration, Irmina has significant experience in police and judicial cooperation in criminal matters within the European Union. She has dealt with legislation concerning the European Arrest Warrant, money laundering, environmental issues, as well as the criminal responsibility of collective entities.

Our other upcoming activities include lectures that will be given by our team members, in November and January 2009 at the Cardinal Stefan Wyszyński University in Warsaw. They will talk about the role of mediation in criminal proceedings from different perspectives.

Previous issues of our brochures are available at the following link:

www.law-now.com/law-now/zones/LNP_Commercialdisputes.htm

Our team



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The Business Ethics and Anti-Corruption Corporate Strategies in CEE conference

We would like to draw your attention to the conference on Business Ethics and Anti-Corruption Corporate Strategies in CEE co-organised by CMS Cameron McKenna in Prague, on 27 - 28 November 2008.

Our colleagues from our Warsaw, Moscow, Kyiv and Bucharest offices will be speaking at this event, covering topics such as:

- anti-bribery laws and compliance challenges (FCPA, anti-corruption enforcement by U.S. regulators in CEE, managing criminal law problems, strengthening collaboration with public administrations)
- implementing compliance programmes to prevent corruption (establishing and updating an anti-bribery programme, policy for dealing with gifts and hospitality in CEE)
- identifying potential abuse and violations of anti-bribery laws (policy for dealing with conflicts of interest, facilitation payments in post-communist era)

- managing internal investigations (conducting complex internal investigations, monitoring fraud, misconduct and corruption)
- anti-money laundering (latest anti-money laundering strategies)
- improving business ethics (building an ethical corporate culture, corporate social responsibility in CEE, compliance due diligence in M&A with CEE companies)
- detecting corruption (establishing and managing a whistle-blowing system).

The conference presentations will be followed by panel discussions:

- Getting to Grips With Conflict of Interest,
- Latest Anti-Money Laundering Strategies.

The speakers are officials of high-profile public institutions and professionals from top CEE companies. Details are available at:

www.marcusevans.com/html/eventdetail.asp?eventID=14831&SectorID=37&divisionID=

Why anti-corruption?

Why is anti-corruption know-how important?

The topic of the Prague conference is not accidental. Anti-corruption has recently become one of the major public concerns in CEE. Taking Poland as an example, not only have we adopted a strict anti-corruption law but also in order to guarantee fair dealings in business, a special service unit, the Central Anti-corruption Bureau (known as the "CBA"), has been established. The prosecuting authorities particularly investigate incentives addressed to persons performing public functions (in short "public officials"). CMS Cameron McKenna devotes a lot of effort to identify and combat the potential risks to which its clients are exposed in this area, especially in times when even buying dinner for a public official or inviting them and/or their family to a cultural event may give rise to liability for bribery (see the outline below).

Types of offences?

- active bribery, which involves giving (promising) benefits to public officials
- buying influence, which involves giving (promising) benefits in exchange for interceding in the settlement of a matter in a public entity.

What are the penalties?

- a fine, restriction of liberty or imprisonment for up to 12 years, depending on the type and significance of the offence.

Who are public officials?

- representatives of public administration or companies with public assets at their disposal.

What is a benefit?

- any economic or personal benefit, even insignificant, including an invitation to a concert or a dinner, a trip or a seminar; the benefit does not need to be given directly to the public official.

Who may be held liable?

- an individual committing the offence of active bribery or buying influence or even a commercial company if such individual acted on behalf or in the interest of this company

Public bribery vs. commercial bribery?

Commercial bribery involves a situation where a company's manager or an individual with influence on the decisions taken by the company, receives a financial or personal benefit (or a promise thereof) in return for any action that may cause damage to this corporate body, any unfair competition practice or any preferential treatment to the benefit of another entity or individual. Also, in the described circumstances, an individual who gives an economic or financial benefit or promises to provide it to the person referred to above can be held criminally liable. The penalties for commercial bribery include a fine, restriction of liberty or imprisonment for up to 8 years.

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