

## FCPA/Antibribery Alert

January 29, 2015

### **New Ukrainian Anti-Corruption Law Takes Effect Establishing a Public Anti-Corruption Law Enforcement Bureau**

On January 25, 2015, a new anti-corruption law took effect in Ukraine as part of a comprehensive legislative initiative targeting corruption among government employees, public officials and private legal entities, and strengthening the country's previous anti-corruption regulations. The package of anti-corruption legislation, adopted by the Ukrainian Parliament and approved by President Petro Poroshenko in October 2014, becomes operative in 2015 to allow time to achieve compliance.

This anti-corruption legislation can be traced to the Euromaidan movement last fall. Former President Viktor Yanukovich's alignment with Russia and failure to integrate with the European Union (EU) led to a groundswell of support for anti-corruption measures. Ukraine's newly-formed government accomplished two goals with broad action. Ukraine enacted necessary anti-corruption and government transparency legislation as a condition for EU-backed financing and corresponding re-engagement.

The new legislation package contains anti-corruption reform measures targeting both the public and private sectors. In addition, the legislation calls for the formation of two new government agencies intended to enhance the country's focus on eliminating corruption—the National Agency for Prevention of Corruption and the National Anticorruption Bureau.

Formed by the Cabinet of Ministers, the National Agency for Prevention of Corruption (the National Agency) is envisaged as a central executive authority exclusively focused on battling corruption. The National Agency's primary charge is to implement and ensure the development of national anti-corruption policies and monitor national compliance with anti-corruption legislation. A closer look at the second newly created agency, the National Anticorruption Bureau (the "Bureau"), follows.

#### **Ukraine Establishes a Public Anti-Corruption Law Enforcement Bureau**

The Law of Ukraine "On the National Anticorruption Bureau of Ukraine" took effect on January 25th and establishes a state agency specially designated to investigate allegations of corruption by senior government officials at all levels, including the President, members of the Cabinet of Ministers, members of Parliament and local governors. The National Anticorruption Bureau will be composed of a staff of up to 700 personnel who will operate from a central headquarters and several regional offices throughout the country.

The Bureau will be led by a director to be appointed by the President of Ukraine from a pool of candidates initially selected by the Bureau's nomination commission, subject to the consent of the Ukrainian Parliament, the Verkhovna Rada. Once appointed, the director may be removed by a vote of no confidence by not less than one third of the members of Parliament and only on specific grounds, such as

conviction of a crime, loss of Ukrainian citizenship, or the assumption of another position of authority in the Ukrainian government.

The Anticorruption Bureau will operate as an independent national law enforcement agency. In accordance with Ukrainian civil and criminal laws, the Bureau will be empowered to: (a) compel the production of documents and information from individuals and legal entities, including other state agencies, local governance bodies and financial institutions; (b) seal off access to property, including offices and assets; (c) seize documents and objects; and (d) collaborate with foreign law enforcement officials. The Bureau will submit semi-annual reports on its activities to the President, Parliament and the Cabinet of Ministers. The reports will then be made publicly available in print media and on the Bureau's website.

The President, Parliament and Cabinet of Ministers have each appointed three members to the Bureau's nomination commission, which in turn will select candidates for the top position. Members of the commission include Giovanni Kessler, an Italian prosecutor currently serving as Director-General of the European Anti-Fraud Office at the European Commission, along with journalists, academics and human rights activists. President Poroshenko will make the final selection from the three candidates proposed by the nomination commission. The President will then submit his selected candidate for bureau director for the Verkhovna Rada's consent. The Bureau is expected to be fully functional by August 2015.

As an added layer of protection intended to "ensure transparency and civil control," the activities of the Anticorruption Bureau will be monitored by the Council of Civil Control, a group of fifteen people to be selected by an "open and transparent" selection process to be approved by the president.

In a recent press release dated January 9, 2015, President Poroshenko acknowledged the failures of the country's prior anti-corruption agencies and described corruption as the country's "biggest internal challenge." To expose and eradicate the culture of corruption, President Poroshenko urged the soon-to-be-formed Anticorruption Bureau to first "demonstrate the results in anti-corruption measures among high officials in order to have the right to fight against so-called domestic corruption." Consistent with this goal, individuals who have been employed by, held a leadership position with, or engaged in contractual relations with, any Ukrainian political party within the past two years will not be eligible for the position of Bureau director.

### **New Anti-Corruption Standards Apply to Public Officials in 2015**

Another law in the anti-corruption legislation package introduces safeguards against corruption among Ukrainian government officials and public sector employees. Specifically, the Law of Ukraine "On Prevention of Corruption" sets forth anti-bribery provisions in the areas of financial disclosure, gift-giving and the prevention of actual or potential conflicts of interest. The new law will require all national and local government officials to annually disclose financial information that will be publically accessible. The financial disclosure obligation will apply broadly to all government officials and employees, including the president, members of the Cabinet of Ministers, members of Parliament, local government officials, judges, law enforcement employees and members of the National Election Commission. To comply with the disclosure obligations, public officials and employees must provide details regarding their annual

income and the value of any real estate and investment assets, including, in some circumstances, assets held by family members not themselves subject to the law. Furthermore, the law provides for selective monitoring of the lifestyles of government officials to ensure that their expenditures correspond to their reported incomes.

When enacted in October 2014, the Law of Ukraine “On Prevention of Corruption” was scheduled to be fully implemented no later than April 2015. Once enforcement of the law begins, all public officials determined to have committed corruption-related crimes will be listed in the publicly accessible Unified State Register of Subjects Who Committed Corruption or Corruption-Related Crimes. In addition, public officials who fail to comply with the financial disclosure obligations will be listed in the publicly accessible Unified State Register of Declarations of Public Officials.

### **Private Companies Are Subject to More Robust Anti-Corruption Regulations**

Public corruption is not the only target. The Law of Ukraine “On Prevention of Corruption” also addresses corporate corruption involving private, foreign and domestic legal entities operating in Ukraine. Demanding the adoption and implementation of “measures necessary and reasonable to prevent and fight corruption,” the law sets forth several methods of policing corruption, including the use of independent experts to assess the risks of unethical conduct. In addition, all wholly or partially state-owned enterprises and all private companies participating in public tenders will now be required to maintain corporate anti-corruption policies. For those companies affected, the law mandates several policy provisions, including procedures for the periodic review of the policy’s effectiveness and employee anti-corruption training. Further, all companies participating in public procurement will now be required to appoint a corporate official responsible for anti-corruption compliance.

The legislation will also strengthen beneficial ownership reporting requirements and increase transparency. The new provisions will require all private entities to disclose information about an entity’s ultimate beneficial ownership, including the corporate structure of any organizational entities that were founders of the reporting entity, and to regularly update the information. Failure to disclose or maintain accurate beneficial ownership information in the Unified State Register on Legal Entities will be punishable by a fine.

### **Enhanced Anti-Corruption Measures Are Anticipated to Help Ukraine Secure Additional International Funding**

In addition to satisfying the country’s contractual loan obligations to the EU, the new anti-corruption laws are also anticipated to help Ukraine secure an additional stream of international aid. The International Monetary Fund (IMF) is currently negotiating a large financial assistance package for Ukraine to help boost the country’s recession-hit economy.

Both the U.S. and Europe have agreed to contribute to the IMF package, provided that funding is conditioned on anti-corruption and budget commitments. With the Ukrainian government’s recent announcement at the World Economic Forum in Davos, Switzerland, that the country will default on its sovereign bonds without debt relief, enforcement of the new package of anti-corruption laws may prove critical to the country’s financial stability.

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