

Slovenia

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

In general, enforcement of criminal law is entrusted to the Office of the State Prosecutor General, which is an independent government agency. State prosecutors prosecute crimes *ex officio*, file and present criminal charges, direct and supervise criminal investigations and have other powers given by law. The State Prosecutor Office is hierarchically organised into the Supreme State Prosecutor's Office governed by the Attorney-General, the Specialised State Prosecutor's Office and 11 District State Prosecutor's Offices. There are no separate national or regional levels of enforcement authorities. Also, no other law enforcement agencies exist. However, a special governmental Office for Money Laundering Prevention and Commission for the Prevention of Corruption has some investigative authorities.

In case the state prosecutor finds that there are no grounds to initiate or to continue criminal proceedings, the injured party (victim) may assume the prosecution. A few minor business crimes may only be prosecuted by the state prosecutor upon the victim's motion to prosecute.

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

The State Prosecutor Act determines the competent state prosecutor office, which corresponds to the levels of court organisation. The Specialized State Prosecution Office is exclusively responsible for prosecution of crimes in the area of organised (business) crime, terrorism, corruption, etc. in the entire Slovenian territory. Similarly, a special investigating Department for the Investigation and Prosecution of Official with Special Authorisations, organised within this office, possesses exclusive competence to prosecute criminal offences committed by state officials.

According to the Criminal Procedure Act (CPA), the prosecutors lead the pre-criminal proceedings, meaning that they decide on the measures of investigation and direct the work of the Police, which then assists or conducts investigations on their behalf. Nevertheless, their relationship is not formally regulated, so that the hierarchy of the state prosecutors over the Police's work is derived from their functional superiority. The Police can only undertake those investigative measures aimed at the collection of evidence and the

determination of the facts of the case, which are authorised by the public prosecutor or the court. Furthermore, in case of prosecution of more severe business, corruption and organised crimes and in case of extraterritorial investigations, a special Decree regulates the cooperation of all engaged enforcement bodies and the operation of specialised and joint investigation teams. A special governmental investigation unit, the National Bureau of Investigation, detects and investigates complex crimes particularly in the areas of economic and financial crimes and corruption.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

Yes, the enforcement is ensured both through a criminal as well as civil enforcement procedure. The CPA provides for interim security measure in form of seizure of proceeds (forfeiture of proceeds) in order to secure the future claim. Such security measure may be ordered by a resolution of the court upon the motion of the state prosecutor in cases where the seizure of proceeds is applicable and where a danger exists that the defendant could use such proceeds for further criminal activities or would conceal, alienate, destroy or otherwise make use of these proceeds so that the future seizure of proceeds after the court proceedings will be rendered impossible or difficult. Similarly, an injured party may, during the criminal proceedings, request the court to secure a future monetary claim.

Furthermore, the Enforcement and Securing of Civil Claims Act provides for the preliminarily security measures such as interim measures and preliminary injunction or security. These security measures can be granted upon the party's request by the relevant court in order to secure the future enforcement of a court decision, which would be otherwise uncertain.

2 Organisation of the Courts

2.1 How are the criminal courts in Slovenia structured? Are there specialized criminal courts for particular crimes?

The judicial system in Slovenia consists of courts with general and specialised jurisdiction. Whilst no specialised criminal courts exist in Slovenia, criminal cases are adjudged by the general courts. The latter are hierarchically structured in three instances: Local and District Courts, which operate on the first instance; four Higher Courts on the second appellate instance; and the Supreme Court of the Republic of Slovenia as the highest court in the State.

In the first instance, the composition of a criminal court depends on the two decisive factors: (i) territorial jurisdiction; and (ii) the type of sanction imposed by the Criminal Code for a certain criminal act. Criminal offences of a less serious nature, which are punishable by a monetary fine or a maximum sentence of three years imprisonment (except for crimes against honour and reputation committed by the mass media), are allocated to the territorially applicable Local Court and adjudged by a single judge. On the other hand, criminal offences, where a sentence of imprisonment for more than three years could be imposed, are designated to the District Court in various compositions (either by a panel of three or five judges). In order to accelerate a criminal trial, the accused person can also denounce his/her rights to a penal trial so that the case is heard by a single judge of a District court.

2.2 Is there a right to a jury in business-crime trials?

No, since the institute of a jury does not exist in Slovene legal order. Nevertheless, lay judges are present in criminal trials before the district courts. Where business crimes are punishable by a sentence of at least three years imprisonment but a maximum sentence up to 15 years' imprisonment, and crimes against honour and reputation committed by the mass media, business-crime trials are heard by a panel of one professional judge and two lay judges. Severe criminal offences punishable by 15 or more years of imprisonment are adjudged by a panel consisting of one presiding judge, a second judge and three lay judges.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Slovenia to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Fraud and misrepresentation in connection with sales of securities

Fraud and misrepresentation are criminal offences punishable under Article 211 KZ-1. Moreover, on a more specific level, Article 231 KZ-1 also regulates fraud in securities trading, which occurs if a person, while trading with securities, falsely represents financial situation, data on profit or loss or any other data in prospectus or by publication of the annual report or in any other manner that significantly affects their value and with such fraudulent behaviour misleads a third party to engage in a transaction with securities. This criminal offence can only be committed intentionally. Furthermore, Article 244 KZ-1 incriminates intentional falsification and use of counterfeit stamps of value or securities.

o Accounting fraud

Business fraud is a criminal offence under Article 228 KZ-1, which can only be committed intentionally by a person performing a business activity, who by misrepresenting the obligations or by concealing the facts misleads the other party. As a result, the offender acquires property or the other party suffers monetary damages.

The more specific Article 235 KZ-1 regulates intentional falsification or destruction of business documents. Persons responsible to keep the books of account, files or other business documents and records as well as legal entities themselves, who enter false information or do not record a significant data or verify or enable the composition of such falsified document, are criminally liable. The same applies to a person who uses such

falsified documents as real or who destroys, damages, hides or otherwise enables the usage of such books of account or other business documents.

o Insider trading

Abuse of inside information in Article 238 KZ-1 is a special form of securities fraud, committed by individuals who have access to non-public information due to their position in the issuing company, equity share or employment relationship with the issuer. The criminal offence may be committed only intentionally by obtaining inside information capable of influencing the price of securities or other financial instrument and by using such information for its own benefit or for the benefit of any third person in order to acquire or dispose with such security. It is also prohibited to communicate such inside information to an unauthorised person or on the basis of such inside information make recommendations to a third person. Moreover, acquisition of such inside information without authorisation is prohibited.

o Embezzlement

Embezzlement is a criminal offence regulated in Article 209 KZ-1, which prohibits unlawful seizing and potential further usage of money or any other property or assets, which were at first lawfully in a possession of the perpetrator by virtue of a certain relationship of trust such as employment, performance of an economic, financial, or business activity, trustee relationship or performance of an official duties. This act can only be committed by acting with a direct intention.

o Bribery of government officials

A special chapter of the Criminal Code regulates criminal offences against official duties and public authorities, in particular bribery crimes. Article 261 KZ-1 explicitly prohibits acceptance of bribes by public officers or government officials and Article 262 KZ-1 incriminates the act of giving bribes. The bribe is any award, gift or other property benefit; or a promise or offer of such benefit. The bribery crimes may be committed by an intentional active request for or a passive acceptance of a bribe by a government official. The bribe should be given to the government official with the intent to perform or not to perform an official act within the scope of his/her official duties. A less severe penalty is imposed if an official act would be performed or would not be performed regardless of the bribe given.

Furthermore, Article 263 KZ-1 prohibits accepting benefits for illegal intervention. It is a criminal offence to accept bribery, for the purpose of using a public official position or using an influence to intervene, so that a certain official act would be performed. Similarly, also giving gifts for illegal intervention is prohibited under Article 264 KZ-1. The person who promises, offers or gives a bribe to a public officer in order to use his/her official influence to intervene in the performance of a certain allowed or prohibited official act, is also responsible. All the above crimes must be committed intentionally.

o Criminal anti-competition

Article 225 KZ-1 incriminates unlawful and intentional abuse of competition. It is a criminal offence, if in pursuing an economic activity a person (natural or legal) circumvents the rules on cartel agreements, abuses a dominant position of one or more companies or creates a forbidden concentration of companies, which prevents or significantly impedes or distorts free competition on the Slovenian or EU market. As a result of such criminal offence, a perpetrator gains large property benefit or another company should suffer significant property damage.

A threatened fine could not be imposed if a participant to an illegal cartel agreement has announced the crime and has actively participated in its investigation and mitigation of consequences.

o Tax crimes

Tax evasion is a crime enshrined in Article 249 of the Criminal Code. It is committed by the wilful giving of false information about income, expenses, property, goods or other circumstances relevant to taxation or by otherwise defrauding the tax authorities, so that the amount of evaded tax liabilities or the undue tax recovery represents a large property benefit of more than EUR 50,000. Similarly, it is also prohibited to knowingly fail to carry out a mandatory report of the income or other circumstances which have an influence on the assessment of tax obligations. Another tax crime is also the wilful refusal of providing information, submitting business books and records or providing explanations to the tax inspection authority.

o Government-contracting fraud

Despite the fact that Article 2 of the Liability of Legal Persons for Criminal Offences Act states that Republic of Slovenia could not be held liable for committing a criminal offence, individual officials or public officers could be liable for committing a criminal offence against official duties and public authorisations. It is a criminal offence pursuant to Article 257 KZ-1 to abuse a governmental office position or to exceed or fail to perform official duties with the intention of acquiring any kind of benefit. Public officials shall also be liable for accepting bribes and benefits for the purpose of illegal intervention in connection with the performance of an official act within the scope of their official duties. All these criminal offences should be committed intentionally.

o Environmental crimes

Several environmental crimes such as illegal burdening and destruction of environment, pollution of sea or waters with vessels, illegal handling of nuclear and other dangerous radioactive substances, pollution of drinking water, tainting of foodstuffs or fodder, destruction of plantations by toxic substances, destroying of forests, unlawful handling with protected animals and plants, transmission of contagious diseases among animals and plants etc. are punishable pursuant to the provisions of a special chapter in Criminal Code on criminal offences against the environment and natural resources. Furthermore, certain environmental crimes such as posing a threat to the environment by noise or light are incriminated under the chapter on criminal offences against the general safety of people and property. Most of these crimes can be committed either intentionally or in negligence.

o Campaign-finance/election law

The Criminal Code incriminates several criminal offences against voting rights and election laws, including, but not limited to, violation of voting rights, obstruction of freedom to vote, abuse of voting rights, violation of free determination, destruction of forgery of electoral documents, falsification of the results of elections or ballot and obstruction of secrecy of ballot. In particular, the acceptance or giving of bribe during the election or ballot in order to vote or not vote in a certain way or to cast an invalid vote is prohibited pursuant to Articles 151 and 157 KZ-1.

o Any other crime of particular interest in Slovenia

Money laundering is a criminal offence defined in Article 245 KZ-1, which incriminates intentional acceptance, exchange, storage, disposal or use of money or concealing of the origin of money or property, which was acquired through the commission of a criminal offence. For the purpose of imposing the sentence, it is irrelevant who committed the original crime. If reasonable grounds for suspicion of money laundering or terrorist financing exist, a special governmental Office for Money Laundering Prevention has the authority to collect and analyse financial data relating to clients and transactions.

o Market manipulation in connection with the sale of derivatives

Market manipulation is prohibited through Article 239 KZ-1, which incriminates abusive acts on financial instruments (derivatives) market. Such abuse may be committed through: (i) concluding a business or issuing an order which gives market participants an incorrect or misleading idea of the offer, demand or price of derivatives or one or more connected persons assures the price of such derivatives on an abnormal or artificial level; (ii) using fictitious means or fraudulent conduct when concluding business or issuing an order; and (iii) spreading incorrect or misleading information on derivatives and spreading rumours or incorrect and misleading information in the mass media.

3.2 Is there liability for inchoate crimes in Slovenia? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Yes, an intentional attempt of a criminal offence is punishable despite the fact that the crime is not completed. Such an attempt is nevertheless only punishable (i) if an attempted crime is punishable with at least three years of imprisonment, or (ii) in case of other minor criminal offences if this fact is expressly regulated with regard to a particular crime. The sentence for attempting to commit a crime shall be applied within the limits prescribed for such a crime, whereas a reduction of sentence is also possible. Moreover, in a case of a voluntary abandonment of an attempt or an inappropriate attempt (an attempt to commit a criminal offence by an inappropriate means or an attempt to harm an inappropriate object) the sentence may be discharged.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Liability of legal persons could be imposed for criminal offences which the individuals (managerial workers, employees or third persons) commit in the name, on behalf or in favour of such legal person. The entity liability for criminal offences is in details regulated in the Liability of Legal Persons for Criminal Offences Act, so that an entity is liable: (i) if the committed criminal offence means carrying out an unlawful resolution or order of its management or supervisory bodies; (ii) if its management or supervisory bodies influenced the perpetrator or enabled him/her to commit the criminal offence; (iii) if it disposes with unlawfully obtained property benefits or uses objects obtained through a criminal offence; or (iv) if its management or supervisory bodies have omitted due supervision over the actions of the employees.

The commission of a criminal offence by an employee of the entity (or by any other individual) should only meet the objective criteria of a respective criminal offence, as culpability of the perpetrator is not required. A legal entity shall thus be liable even if the perpetrator is not criminally liable for the crime or if he/she has acted under the influence of force or threat of the legal entity. However, if there is no other body in the legal entity apart from the perpetrator him/herself which could supervise such perpetrator, the entity shall only be liable within the limits of the perpetrator's liability.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

The liability of a legal person does not preclude the criminal liability of its managers, officers or directors for committing the same criminal offences. Moreover, the criminal liability of legal persons shall not exclude the liability of natural persons as abettors or aides in the same criminal offence. In general, the Slovenian Criminal Code aims toward autonomous criminal liability of legal persons.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

In Slovenia, criminal offences committed both by the legal entity or natural persons are prosecuted ex officio by the Office of the State Prosecutor General. Consequently, authorities are obliged to indict not just natural persons but also legal persons.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

The Slovenian Criminal Code prescribes strict time limitation periods for the criminal prosecution to commence and for the execution of the sentence. The limitation period for the initiation of the criminal prosecution starts to run from the day the criminal act was committed, whereas the limitation period for the execution of sentence starts to run from the day the judgement becomes final. The duration of such limitation periods depends on the gravity of the sentenced imposed and varies from six to 50 years, so that longer limitation periods are in place for more severe crimes. However, for particularly severe criminal offences, no statute limitations exist (e.g. crimes with life imprisonment, crimes against humanity and crimes under international treaties). In case of crimes against sexual integrity and marriage, family and youth committed against a minor, the time limit for criminal prosecution begins to run only when the victim (minor) reaches adulthood.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

In case of a continued criminal offence (simultaneous or successive commission of two or more equal or similar criminal offences against property that with regard to the place, method or other equal circumstances represent a uniform activity), the limitation period commences after the commission of the last offence. Consequently, crimes occurring outside the limitations period shall also be subject to prosecution. If more than one sentence is prescribed for a criminal offence, the limitation period applicable for the most severe punishment is used.

5.3 Can the limitations period be tolled? If so, how?

The limitation period for the criminal prosecution is interrupted and starts to run again if the perpetrator commits another criminal offence of the same or greater seriousness before such a period has ended. Further, the time limit for the execution of the sentence is suspended during the time, in which the sentence may not be imposed due to legal reasons. Also, the limitation period for the

execution of the sentence ceases to run the day the accused has started to endure the punishment.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

Criminal procedures shall be initiated upon request of the authorised prosecutor (state prosecutor or an injured party). For the majority of crimes the investigations are initiated ex officio by the State Prosecutor's Office. Whilst state prosecutors are obliged to conduct a criminal investigation, a principle of appropriateness of criminal prosecution enables them to withdraw from the prosecution in line with enforcement policy. For instance, in case of disproportionality between the low importance of the crime and the consequences that would result from the criminal prosecution.

If the state prosecutor withdraws from the prosecution or decides not to proceed with an investigation, the injured party has to be informed within eight days of his/her right to continue the prosecution as a private prosecutor within eight days (the so-called "subsidiary prosecution"). Such injured party can effectively execute the same rights as the state prosecutor and has the equal position in the criminal procedure. Regardless of the above, the initiation of criminal proceedings for certain less serious crimes remains within the discretion of the injured party (see also 1.1 above).

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Slovenian authorities use several international judicial bodies to cooperate with foreign prosecutors, in particular in cross-border business crime cases. On a formal level, such cooperation is regulated (i) on an international level through bilateral or international agreements, and (ii) on the EU level. With respect to the latter, the Act on Cooperation in Criminal Matters with the Member States of the EU implements the relevant EU legislation. Moreover, Slovenian Office of the State Prosecutor General participates in Eurojust, Eurojustice, OLAF, Europol and the Academy of European Law (ERA). It is also a member of several international associations of prosecutors. Moreover, criminal authorities have several informal mechanisms on their disposal to make a request for legal assistance.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The terms for gathering information as well as other investigative measures of the Police, state prosecutors and investigating judge are provided by the CPA. However, no specific formal rules of evidence exist in the criminal procedure.

Under the CPA, the Police are obliged to undertake all necessary steps in case a suspicion exists that a criminal offence which is liable to public prosecution was committed. The Police are entitled to a wide array of actions such as to execute various inspections, restrict movement, perform identity checks, send out wanted

circulars, execute interrogations etc. In relation to business crime, the important power is the right to inspect specific facilities, premises and documentation of enterprises and other legal entities in the presence of the responsible person. An official note or minutes are made detailing such actions.

The CPA provides further possibilities of secret surveillance measures in order to gather information in the investigation of business crime. The police can execute secret surveillance measures as provided by Article 149.a of the CPA, which have to be approved by an order of the public prosecutor or the investigating judge on grounds of written request in cases as prescribed by law. The scope of the surveillance and the measures used determines who shall issue the order. In order to approve such measures sound reasons for suspicion must exist that the criminal act was committed by a certain individual. Further, the Police can acquire the information from the operator of the electronic communications network as provided by Article 149.b of the CPA, if reasons for suspicion exist. Article 150 of the CPA provides the methods of: (i) monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network; (ii) the control of letters and other parcels; (iii) the control of the computer systems of banks or other legal entities which perform financial or other commercial activities; and (iv) wire-tapping and recording of conversations with the permission of at least one person participating in the conversation. Under the CPA also the possibility of fictitious purchase, fictitious giving or receiving of gifts and fictitious receiving or giving or bribery exists (Article 155 CPA). Furthermore, measures such as undercover operations, house and personal investigations, interrogations of both the defendant and of witnesses as well as other methods are provided by the CPA (Articles 155.a, 214-267 CPA).

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

Enforcement authorities may demand that a company produces documents only if preliminary investigations are pending. A company that has the documents that could be used as a proof in a further criminal procedure is obliged to hand them over, otherwise it may face a monetary fine.

Furthermore, a house search of the company's premises may be conducted under the circumstances stipulated both in the Constitution of the Republic of Slovenia and in the CPA. A search of premises is only legal if there are sound reasons for suspicion that a certain person (natural or legal) has committed a crime and that there is a likelihood of either (i) apprehending the perpetrator, or (ii) discovering the trace evidence of the crime, or (iii) discovering objects important for the criminal procedure. A person whose premises are being searched or his/her attorney has the right to be present; furthermore, two full-aged witnesses need be present during a house search. A house search can only be conducted upon an appropriate court decree which has to be presented to the person whose premises are to be searched. Moreover, a person is firstly asked to voluntarily hand over the persons, objects and/or documents searched.

The CPA also provides for procedure of the search of electronic devices (Article 219.a CPA). The latter is similarly only possible if sound reasons for suspicion exist and if there is a likelihood that a crime has been committed and that the electronic device entails documents which will enable to identify or catch the perpetrator or find traces of crime that could be used as evidence in the criminal procedure.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Slovenia recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Slovenia's labour laws protect personal documents of employees, even if located in company files?

The court may seize and store all documents or electronic devices that could be used as proof in a further criminal procedure. There are no protections that a company can seek in terms of seizure of their business documentation and objects (e.g. for certain type of documents marked as business secrets). Companies can only demand that business data will not be published by the authorities.

A house or personal search is also possible with regard to persons who are exempted from the obligation to testify (e.g. privileged witnesses such as close family members and other persons bound by public secrecy or professional confidentiality duty). However, specific legislative acts regulate the house search of attorneys' and public notaries' premises and provides further procedural guarantees. A search of attorneys' premises is only allowed with respect to specific files and communications which are explicitly stated in the court decree, so that the secrecy of other documentation and objects remains intact. Moreover, due to the confidentiality of the relationship between the client and the attorney with regard to court proceedings, all information that the attorney receives from the client based on their professional relationship may not be reviewed or seized. For this reasons a representative of the Slovene Bar Association needs to be present during the search in addition to two other witnesses. Furthermore, a house and a personal search is not possible with respect to premises and persons who enjoy immunity under international law. Slovenian labour and data protection laws provide for protection of personal documents of employees against unlawful disclosure. Nevertheless, if such personal documents are important for the investigation of a criminal offence and could be later used as evidence in a criminal procedure, such documents should be disclosed to the enforcement authorities if specified on the court decree.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

If suspicion exists that certain documents in connection to a criminal offence are kept by a certain employee, the Police or state prosecutor, depending on the stage of the procedure or the measures imposed, may seek documents from the employee in the same way as from the company. Before the investigation (such as a house or a personal search and seizure of objects), the employee should be asked to submit the documents voluntarily. If company employees do not want to hand over such documents, they may face a monetary fine or even imprisonment up to one month.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

A search of the home or office of any third person may be conducted if there are reasonable grounds for suspecting that a specific person has committed a criminal offence and that there is a likelihood of apprehending the perpetrator or discovering the traces of the crime or objects of importance for the criminal procedure. Similarly, any third person who possesses such objects is bound to hand them over at the request of the court, otherwise it may face consequences (see also question 7.4 above).

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

Once reasons for suspicion that a certain person was involved in a crime exist, such suspect needs to be, prior to the investigation, informed of the criminal offence he/she is suspected of and the grounds on which the charges have been brought. Such an employee, officer or director of a company needs to be informed that he/she is not obliged to submit to questioning (e.g. to plead guilty or to answer any questions) and has the right to a lawyer. Moreover, forcing of a confession or any other statement from the suspect or from any other participant in the proceedings is strictly prohibited. The questioning can take place in the pre-trial stage, whereas it can only count as a valid proof in the further proceedings if all above stated preconditions were met. Further, in the investigation phase and the trial phase the accused is interrogated by the investigating judge or a presiding judge before a court; a videoconference or questioning abroad with the help of legal aid is also possible.

If such individuals are questioned as witnesses, they are bound to respond to the invitation and to testify. Nevertheless, certain persons may be exempted from the duty to testify due to their relationship with the accused (e.g. privileged witnesses such as close family members and representatives of some professions) or with respect to a certain information (e.g. public secrecy or professional confidentiality). Also, nobody is bound to answer certain questions that would likely cause disgrace, criminal prosecution or inflict material damage to him/her or close family members.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

The Government may question third persons in the investigation or trial phase (see question 7.6 above). Such a third person is obliged to appear at the questioning and to testify; moreover he/she is obliged to speak the truth as false testimony constitutes a criminal offence. The enforcement authorities also have the right to order forcibly bringing of a person to questioning. In the investigation phase a third person acting as a witness shall be examined separately and without the presence of other witnesses, whereas in the trial phase the witnesses may be confronted.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

The right to refuse a question during the criminal procedure depends on the status of the person who is interrogated and his/her relationship to the information asked of them (see question 7.6 above). Accused persons are protected with the privilege against self-incrimination and have the right to be represented by an attorney of their own choice. Similarly witnesses also have the right to be represented by an attorney. If the accused person does not appoint a lawyer of his/her own choice, the court is obliged to appoint a defence counsel in certain cases provided by the CPS such as (i) in cases of crimes punishable with eight or more years imprisonment, (ii) if oral hearings take place in absence of the accused person, and (iii) in pre-trial investigation if such questioning will be considered as proof in the further proceedings.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

The criminal cases can be initiated on the demand of the rightful prosecutor under the CPA. The prosecutor is either the public prosecutor for the criminal offence which are prosecuted *ex officio*, or by the private prosecutor, for criminal offences which are prosecuted on the ground of a private claim as provided by the Criminal Code for individual criminal offence. The public prosecutor is obliged to commence the criminal prosecution if a reasonable suspicion exists that a criminal offence, which is prosecuted *ex officio* under the Criminal Code, was committed, if the law does not state otherwise.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

The general principle is that the liability of the entity and of the individual should be treated separately. Special conditions must be fulfilled in order for an entity to be held liable. Please see above questions 4.1., 4.2 and 4.3 for further information.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

The CPA provides for the possibility of the deferral of the prosecution under the condition of consent of the injured party in case of criminal actions as predetermined per CPA. In such case, the suspect is given the opportunity not to be prosecuted if he/she follows the instructions or actions as ordered by the prosecutor. These are the options as per the CPA: (i) remedy of damages; (ii) payment of a sum for the benefit of a public institution for charity purpose or for the benefit of victims of criminal acts; (iii) participating in a community service; (iv) payment of child support; (v) medical treatment; (vi) psychological or other counselling; and

(vii) restraining order regarding a person or certain area. In case the accused fulfils the obligation, he/she will not be prosecuted.

Special instructions of the State Prosecutor General apply under which the deferred prosecution is possible if the act of the defendant has the elements of the criminal offence, where the defendant should be sanctioned, but not necessarily in form of a criminal sanction. When determining if the matter is suitable for deferred prosecution, the gravity of the criminal offence, the gravity of the participation, the role of the suspect, minor responsibility, the fact that only the attempt was made, small scope of damages and other elements are considered. Especially suitable for the deferral of the prosecution are the criminal acts of falsification of document, suppression and misappropriation, monetary criminal acts where victims are legal entities (especially such as theft, fraud, damaging property of third persons), causing general danger, causing a car accident due to negligence are provided, as well as situations where the compensation of the injured party is more significant as compared to the execution of the criminal proceeding or sanctioning.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

The CPA provides the possibility of a damages claim, return of confiscated items or annulment of concluded business. The court will decide on this if it does not prolong the procedure. The entitlement to such right goes to individuals who could raise such claim in a civil proceeding.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The burden of proof lies with the prosecutor (either the state or private prosecutor). Whoever is accused of committing a criminal offence is considered to be innocent until his guilt is established with a final verdict. The court can only convict an individual in case it is convinced of his guilt. The defendant has no obligation to defend himself and answer to the allegations. However, if he chooses to defend himself, he is not obliged to testify against himself, his relatives or to admit guilt. The defendant has the right to state all the facts and provide proof to his benefit. If the defendant defends himself with affirmative defence, the burden of proof is carried by the defendant.

9.2 What is the standard of proof that the party with the burden must satisfy?

There are different standards of proof applicable to when and which actions are allowed in a certain phase of a criminal proceeding. These standards are: reasons for suspicion; reasonable suspicion; and sound reasons for suspicion. Notwithstanding these, the court must be convinced beyond reasonable doubt that the defendant is guilty of the accused criminal offence as described in the indictment proposal by the prosecutor. It is the obligation of the court to truthfully and fully establish the facts required for a lawful decision.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

As described in questions 9.1 and 9.3, it is the judge/panel who determines whether it is convinced to a sufficient level to provide a certain verdict. The court can only decide regarding the person accused and only regarding the act being the subject of indictment as it was provided to the court or eventually changed in the course of the main hearing or extended indictment. When court makes the ruling, it can be done only on grounds of facts and evidence, which have been considered at the main hearing. Please see question 2.1. regarding further information on the jurisdiction.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

The Criminal Code provides the liability of a perpetrator, an accomplice, an instigator (who solicits) and an aide (who helps). The perpetrator and the accomplice are to be punished in the scope of their intent or negligence, whereas the instigator or the aide are liable only in the scope of their intention. Both the instigator and the aide can have their sentence remitted in case they voluntarily prevented the criminal offence. The same applies in case they have tried to prevent the consequence in an honest and suitable manner, even if such consequence did not happen due to other reasons.

Furthermore, the possibility of accomplices of multiple corporations is provided by the Liability of Legal Persons for Criminal Offences Act, whereas each of the entities must meet one of the conditions for liability as provided by this Act (as described in question 4.1.) and each of them is individually liable as if they were the only one liable in addition to the perpetrator.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

The Criminal Code provides a description of individual criminal offences, including whether an intent (direct or eventual) or only negligence is required in order for an individual to be held liable for a criminal offence. If intent is required for the conviction of a certain criminal offence and the defendant is able to prove that he/she did not have the requisite intent, this will result in no conviction as all elements of a criminal offence will not be established. If negligence alone is enough to be held liable for such criminal offence, it is possible that he/she will still be convicted considering whether his/her negligence was wilful or ordinary. With regard to business crime the Criminal Code foresee only one criminal act, which can be executed with negligence, these being obtaining or providing of business secret without authorisation.

The burden of proof respectfully of the lack of intent is carried by the defendant.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

In principle the rule of *ignorantia iuris nocet* ("ignorance of the law is harmful") applies, whereby certain exceptions are applicable. The perpetrator who was not obliged and could not know that his/her certain action is unlawful cannot be held liable for such an act. This is considered as inevitable mistake of law, which exempts the guilt of the perpetrator. If the mistake of law could be evaded, the perpetrator should have been and could have been aware that his/her actions were unlawful, he/she can therefore be held liable for such actions. In this latter case, the perpetrator can still be found guilty, but sanctioned with a milder sentence.

The burden of proof regarding lack of knowledge is carried by the defendant. In case of mistake of law which could be avoided, the court will consider whether the defendant was in place to familiarise himself with the breached rules under the same conditions as other individuals in his environment and whether should he had been familiarised with such rules due to his work, role or other position.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

Yes, the defendant can claim the mistake of fact under the Criminal Code. It is understood the act has been committed under mistake of fact if the perpetrator was not aware of the circumstances which are listed as the elements of a criminal offence or he had been in deception that under the existing circumstances such an act is deemed permitted. A perpetrator acting under the mistake of fact cannot be held liable for the criminal offence for which the Criminal Code provides it can only be executed with intent. In case the criminal offence can be made in negligence, the guilt cannot be excluded if the mistake of facts relates to the facts which he/she should have or could have been aware of in the scope of required carefulness.

The burden of proof lies with the defendant.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

Under the CPA, anybody is entitled to report the criminal offence which is prosecuted ex officio. The Criminal Code further prescribes the cases and obligation of reporting the criminal offence where the omission of such notification would represent a criminal offence itself. Firstly, an individual who has information about the perpetrator of criminal offence for which there is a prison sentence of minimum 15 years or a lifelong sentence and fails to report such act, whereby this information is crucial for finding the perpetrator or the deed, shall be punished with a prison sentence of up to three years. An omission of reporting an executed criminal offence is not applicable in regard to acts listed under question 3.1, as these

criminal offences are not punished with sentences of more than 15 years of imprisonment. Secondly, an individual can be liable for aiding a perpetrator after the committed crime or not declaring an intended criminal offence which carries a sentence of three or more years of imprisonment. Special provisions apply regarding the responsibility of obligation to report in cases of state authorities and organisations with public authority.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

The CPA provides only for the possibilities of deferred prosecution as described under question 8.3 or for the possibility of a milder sanction or sanction remission, if this is provided for each individual criminal act per the Criminal Code. The general policy is that the court can give a milder sanction in case the law prescribes so or when mitigating circumstances exist, which establish such decision. It can remit the sanction when the law prescribes so, whereas this also includes the right to give a milder sanction in case it decides to sanction the individual anyway.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Slovenia, and describe the favourable treatment generally received.

The Liability of Legal Persons for Criminal Offences Act provides further possibilities of remitting or mitigating the sanction in prescribed cases. Such options exist in cases of the omission of due supervision over the actions of the employees. If the corporation has voluntarily reported the perpetrator before such criminal offences were revealed, a mitigated sanction can be imposed. If, in addition to the above, the corporation also claims the refund of the obtained monetary proceeds or is looking to recover the caused consequences or to inform of grounds of responsibility of other corporations, the sentence can be remitted.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

The plea bargaining system is integrated in the CPA, allowing an agreement on confession of guilt. Such agreement can be suggested (i) by the defendant, its attorney or the public prosecutor either in the criminal proceeding, or (ii) in the pre-trial phase by the public prosecutor in case of reasonable suspicion that the defendant executed the criminal act. Such agreement must be in writing, signed by both parties and given to the court for judgement.

The parties can agree on the (i) criminal sanction, admonitory sanction, the manner of execution of the sanction, (ii) cease of prosecution of public prosecutor of other criminal actions not covered by the confession, (iii) cost of criminal proceeding, and (iv) other actions.

The court then decides whether the agreement is compliant with the proceeding as prescribed by the CPA and whether all conditions for admitting guilt have been sufficed.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

The Office of the State Prosecutor General issued the guidelines on admittance of guilt and plea bargaining. Under the guidelines, the public prosecutor should be open to negotiating if possible, especially (i) in cases where the procedure could be shorter, (ii) to obtain proof or information with regard to the suspicion of another criminal offence of higher importance, (iii) in order to protect the victims and witnesses, or (iv) when the proposal is made by the defendant. The given confession cannot be partial or conditional; it must confirm the crucial facts describing the criminal offence and be, by all means, given voluntarily. The proposed sanction must still remain in coherence with the sanctions as determined by the court and considering both the objective and subjective circumstances of the criminal offence. The suggested sanction shall not be lower than 2/3 of the sanction which would be given by the court in a comparable case. Exceptionally the sanction could be lowered to half of the foreseen sanction of the court, considering all the circumstances, possible consequences of a possible agreement and the principle of proportionality. The public is entitled only to the information on the concluded agreement and its primary content (i.e. sanction, costs).

As described under question 14.2, all agreements on confessions of guilt shall be given to the court, which issues a decision on either accepting the agreement or rejecting the agreement and continues with the procedure as if the defendant pled not guilty.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

The court determines the sentence in the scope prescribed as per the Criminal Code; for each individual criminal offence, considering the determined criminal offence, the gravity of the executed criminal offence and the guilt of the perpetrator. When determining the sentence, all circumstances are considered – both eventual mitigating and aggravating circumstances that have influenced the perpetrator. Also the possible influence of the sentence on the future life of the perpetrator is taken into consideration when determining the sentence. The sentence shall be individualised, due to the differing circumstances of each individual criminal offence and its perpetrator. The mitigating circumstances or the Criminal Code itself can affect the court on imposing a milder sanction or lesser sanction as provided by the law. Nevertheless, the Criminal Code provides limitations to lowering the sanctions.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

When imposing the sentence the court considers the elements described under question 15.1, as well as the economic power of the

corporation, as prescribed per the Liability of Legal Persons for Criminal Offences Act. This Act provides the following possible sentences: monetary fine; confiscation of assets; termination of the legal entity; and the prohibition of disposing with money market papers which such corporation holds. The monetary fine can be determined in the scope between EUR 10,000 and 1,000,000, depending on the further criteria for each individual criminal offence. The termination of the legal entity is possible if the activity of the corporation was exploited in total or in mass measure for conducting criminal offences. Further, the preventive measures (publication of the verdict and prohibition of certain activity for the corporation) and the conditional sentence are also provided.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

The right to appeal to the verdict is given to the parties (defendant and the prosecutor), the attorney of the defendant, its legal representative, and the injured party. The public prosecutor is entitled to appeal either to the benefit or to the detriment of the defendant. Appeal against a verdict is possible for the following reasons: on ground of substantial violation of provisions of the criminal procedure; on ground of violation of criminal law; on ground of erroneous or incomplete determination of the factual situation; and on account of the decision on criminal sanction; confiscation of property benefits; costs of the criminal proceedings; indemnification claims; and the announcement of the judgement in the press and on radio or television.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

As described under question 16.1., an appeal against a verdict is possible due to the decision on criminal sanctions (Art. 370 ZKP). The same parties are entitled to raise an appeal as described under question 16.1. (367 ZKP).

16.3 What is the appellate court's standard of review?

Standard of review covers the scope of the claims as provided by the appellant in accordance with appellate reasons as described under question 16.2. Additionally, the appellate court has to examine the elements that are provided per CPA *ex officio*. If the appeal is raised due to erroneous and incomplete determination of the factual situation or on ground of violation of criminal law to the benefit of the defendant, the scope of appeal should include the appeal against the criminal sentence and confiscation of property benefits. If the appeal was raised solely for the benefit of the defendant, the judgement cannot be modified to the detriment of the defendant regarding the juridical classification of the offence and the criminal sanction imposed.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

The appellate court has the right to either (i) annul the initial judgement and return the case to the first instance court for a new trial, which should conclude with a new decision, or (ii) to change the verdict of the first instance court. The possibility of annulment

is provided when the appeal is based on the argument of substantial violation of the criminal proceeding (except for listed cases as provided per CPA) or due to erroneous or incomplete determination of the factual situation where additional hearing is required. In such case the panel of judges must be formed again.

In case the material facts were properly determined, but due to the factual determination different judgment should have been issued under the opinion of the second instance court, the second instance court can modify the judgement by itself.

The appeal raised in due time stays the execution of the sentence as provided by the first instance court.

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