



November 2017

Government publishes White Collar Crime and Anti-Corruption Measures

On 2 November 2017, the Government published a package of measures designed to strengthen Ireland's response to white collar crime. The package contains 28 measures, each with a specific target date for completion. It also published the Criminal Justice (Corruption Offences) Bill 2017 which is separately considered below.

Responsibility for completing the various action items in the white collar crime package has been assigned to the Department of Finance, the Department of Justice and Equality and the Department of Business, Enterprise and Innovation. While some of the actions are already under way, Quarter 2 of 2019 is the outside implementation date for all of the actions.

Key Actions

- ❑ The Office of the Director of Corporate Enforcement will be established as a new independent company law enforcement compliance agency so as to give it greater autonomy, particularly as regards recruitment and staffing.
- ❑ A Garda-led Joint Agency Task Force will be launched on a pilot basis, to tackle criminality in a specific area. It will operate initially for a period of six months looking at the issue of payment fraud, including invoice redirection fraud and credit card fraud.
- ❑ A Criminal Procedure Bill will be published with the aim of streamlining criminal proceedings by ensuring all pre-trial

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legal issues have been resolved before a jury is empanelled. It is hoped that this will reduce the amount of time jurors are required to make themselves available for trials and lower the risk of a number of jurors having to drop out of the jury for various reasons. The Bill also provides for the greater use of technology in criminal trials, including the electronic submission of warrants and for the more efficient and widespread use of video-link hearings.

The Criminal Justice (Corruption Offences) Bill 2017

The Criminal Justice (Corruption Offences) Bill 2017 (the “**Bill**”) was published on the same day as the white collar crime measures. If enacted, the Bill will repeal and replace the seven previous Prevention of Corruption Acts 1889 to 2010, introduce some additional offences and generally consolidate and modernise Ireland’s anti-corruption laws. The Bill addresses six recommendations made by the Mahon Tribunal and deals with corruption in both the public and private sectors. Some key provisions of the Bill are outlined below.

- ❑ Section 5 of the Bill contains the offence of active (bribe-giving) and passive (bribe-taking) corruption. It addresses corruption within both the public and private sectors without distinction and according to the Bill’s Explanatory Memorandum, is intended to cover all public and private sector positions, including those in voluntary bodies such as sporting or charitable organisations.
- ❑ A new offence has been introduced whereby a company can be liable for the actions of directors, managers, employees or agents who commit a corruption offence for the company’s benefit. It will be a defence for a company to prove that it took all reasonable measures and exercised due diligence to avoid the commission of the offence.
- ❑ The Bill also provides for the individual criminal liability of a company’s senior officers for offences committed by the company with their consent, connivance or wilful neglect.
- ❑ A person can be sentenced for up to ten years and/or have an unlimited fine imposed on them, if convicted on indictment of one of the main corruption offences in the Bill (however the maximum sentence for conviction on indictment for “trading in influence” – see below - is five years).
- ❑ The Bill includes a new offence of “trading in influence” which criminalises a person offering a bribe in order to induce a third party to exert an improper influence over an act of an official and corruptly accepting the bribe on these grounds.
- ❑ Following a recommendation made by the Mahon Tribunal, the Bill makes it an offence for public officials to use confidential information acquired in the course of their duties to obtain advantage. It also outlaws a person giving a gift or advantage where the person knows, or

ought reasonably to know, that it will be used to facilitate corruption.

- The Bill gives the Court discretion to order that a public official found guilty of a corruption offence be removed from their public office or position. The Bill also gives the Court discretion to prohibit those convicted of certain corruption offences from seeking certain public appointments for up to ten years.

The Bill in its current format is still subject to amendment. However it is recommended that companies should start preparing for some of the proposed legislative changes.

Implications of the Bill

As the Bill provides that companies can be held liable for any corrupt acts committed by their directors or employees and certain other parties (as described above), companies should start putting anti-corruption policies and procedures in place and provide training to relevant personnel, to show that corruption will not be tolerated by the firm. As noted above, it will be a defence if the company can show that it “*took all reasonable steps*” and “*exercised all due diligence*” to prevent corruption. No guidance has yet been provided as to what might constitute “*all reasonable steps*” or “*all due diligence*,” but if a company has anti-corruption policies and procedures in place and can show that it provided training on them, this may assist it in defending a charge.

Contact information

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