



June 2018

## Anti-Corruption legislation passed

The Criminal Justice (Corruption Offences) Act 2018 (the “**Act**”) has recently been signed into law (on 5 June 2018). Last year the Irish Government identified the passing of the Act into law as one of the key measures to be taken to combat white collar crime (see previous article on the Irish Government’s white collar crime measures here: [Link](#))

Corporates should be aware that the Act criminalises corruption both in the public and private sectors and therefore they should ensure that they have anti-corruption policies and procedures in place.

### Overview

The Act gives effect to some of the recommendations made in the Mahon Tribunal and is drafted in broad terms. For example there is a non-exhaustive definition of the term “*corruptly*”, which is stated to include certain behaviours, therefore giving scope for other non-listed behaviours to come within the definition’s ambit.

As mentioned above, the Act also covers corruption in the private sector, and as was explained in the Explanatory Memorandum to the Criminal Justice (Corruption Offences) Bill 2017, voluntary bodies such as sporting or charitable organisations are intended to fall with the legislation’s remit.

The Act criminalises both direct and indirect corruption i.e. a person who confers a benefit (described in the Act as a “*gift, consideration or advantage*”) on another person where they know, or ought

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reasonably to know, that the benefit will be used to facilitate an offence under the Act shall be guilty of an offence.

## Key provisions

Some notable provisions in the Act are as follows:

- **active and passive corruption:** the Act criminalises (among other things), directly or indirectly, corruptly offering or giving a gift, consideration or advantage to a person on account of “*any person*” doing an act in relation to his or her office, employment, position or business and the acceptance of a gift, consideration or advantage on this basis.
- **corporate liability:** the Act creates a new offence whereby a company can be prosecuted for the acts of directors, managers, employees, agents or subsidiaries (as well as other named parties) who commit an offence under the Act for the company’s benefit. It will be a defence for a company to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- **personal liability of senior management:** the Act also provides for the individual criminal liability of a company’s senior officers for offences committed by the company with the consent, connivance or wilful neglect of the officer.
- **“trading in influence”:** the Act 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.
- **presumption of corruption:** the Act introduces a presumption of corruption in certain instances where benefits have been given to an official, a “*connected person*” of the official or to another person for the intended benefit of either of the aforementioned parties, where the person giving the benefit had an interest in certain functions specified in the Act being discharged by the official. Individuals who are considered to be a “*connected person*” of an official include a person who has joint beneficial ownership or any other close business relations with an official, a spouse or civil partner of the official and a child or parent of the official.
- **extra-territorial scope:** the Act provides that a person can be convicted of specific corruption offences where the offence is committed outside of Ireland in certain circumstances.
- **penalties:** 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 Act. An Irish official who is convicted on indictment of one of the main corruption offences can also be ordered to forfeit his or her office or be prohibited from seeking certain public appointments for up to ten years.

## Recommended actions

As mentioned above, a company can be prosecuted for corrupt acts committed by its directors, employees and certain other parties but it will be a defence for the company to show that it “*took all reasonable steps*” and “*exercised all due diligence*” to prevent the corruption taking place. Therefore, companies should ensure that they have anti-corruption policies in place which make it clear that corrupt behaviour will not be tolerated by the firm. Staff training should also be provided on these policies.

While no guidance has yet been provided as to what might constitute “*all reasonable steps*” or “*all due diligence*”, if a company has anti-corruption policies and procedures in place and can show that these are embedded in the firm, this may assist it in defending a corruption charge.

Also, where a company engages a third party, it is recommended that the contract contains a provision confirming the company’s commitment to adhering to the Criminal Justice (Corruption Offences) Act 2018 and requiring the third party to comply with the Act and to notify the company if it becomes reasonably suspicious that the Act may not have been complied with in connection with the performance of the contract.

## Contact information

If you have any queries about the information contained in this article, please contact Muireann Reedy of our Regulatory Investigations Unit at [Muireann.Reedy@dilloneustace.ie](mailto:Muireann.Reedy@dilloneustace.ie) / 01-674 1002 or your usual Dillon Eustace contact.

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