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Industry Information

## Reform of Irish Anti-Corruption Legislation

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The Minister for Justice and Equality, Charlie Flanagan, announced Monday, 30 July 2018, that the Criminal Justice (Corruption Offences) Act 2018 has come into force. The Act was signed into law by the President on 5th June 2018 following swift passage through the Houses of the Oireachtas this year. The Act revamps the law on white collar crime in Ireland and will have a significant impact on companies and organisations operating in Ireland.

The Act substantially improves Irish legislation by consolidating the law in Ireland on crimes such as bribery and corruption. It also aims to enhance transparency over the actions of officials in positions of influence and power though the offences address corruption within both the public and private sectors.

The Act is one part of a series of initiatives proposed by the Irish Government last year in attempting to tackle white collar crime. The Act gives effect to certain recommendations in the report of the Mahon Tribunal which investigated corruption of public officials and planning irregularities. Minister for Justice and Equality, Charlie Flanagan, has said that the Act represents a “complete modernisation” of the country’s laws.

### New Offences

From a corporate point of view, the Act provides that a company will be liable for the actions of its directors, company secretary, employees, agents or subsidiaries who are guilty of a corruption offence where the intention for committing the offence is obtaining or retaining business or a business advantage for the company. Where an offence is committed by a company with the consent, connivance, or due to wilful neglect of a person who was a director, manager, secretary or other officer of the company, that person shall also be guilty of the offence.

Significant provisions of the Act include:

- » **Active & passive corruption**
  - **Active corruption:** it is an offence for an individual, directly or indirectly, to corruptly offer or give 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
  - **Passive corruption:** it is an offence for an individual to accept a gift, consideration or advantage on this basis
- » **Active & passive trading in influence:**
  - a gift, consideration or advantage to induce another person to exert an improper influence over an Irish or foreign official is an offence
- » **Corruption in relation to office, employment, position or business:**
  - it is now an offence to obtain a bribe from any person or to transfer confidential information obtained in the course of public office with the intention of obtaining a bribe
- » **Creating or using false documents:**
  - the creation of false documents in the knowledge that the information contained therein is false or misleading with the intention of inducing another person to an act in relation to his/her office is an offence
- » **Intimidation:**
  - it is an offence to threaten to harm an individual in order to corruptly influence them or force them to carry out a certain act in relation to his/her office



## Extra-territorial Jurisdiction

The Act also addresses acts of corruption occurring outside the State, mirroring provisions of the Bribery Act 2010 in the United Kingdom. Irish citizens, Irish officials, individuals who resided in Ireland for 12 months immediately preceding the alleged commission of the offence, a company or any body corporate established in Ireland, will be liable for offences committed outside the State where the act in question would constitute an offence if committed within the State.

## Tougher Penalties

The Act increases the penalties for corruption offences. Certain offences convicted on indictment can attract up to 10 years imprisonment and unlimited fines. *"Corruption is a very serious crime that has the potential to do considerable social and economic harm, especially when committed by public officials. The penalties must be sufficiently harsh to reflect this"*, said the Minister for Justice and Equality on the introduction of the Act.

Companies can defend a prosecution by asserting that it took "all reasonable steps and exercised all due diligence" to avoid the commission of the offence. It is of paramount importance therefore for companies to ensure that their anti-corruption policies and procedures are now updated to reflect the provisions in the Act in the event that they come under scrutiny in the courts.

## Practical Steps for your company

At time of writing, the commencement order, while announced, has not yet been published. If steps have not already been taken, businesses should act now. Management should meet to review current policies in place and where necessary, ensure staff receive appropriate training in order to be aware of the various offences provided for under the Act and to ensure the company has appropriate safeguards and procedures in place.

## Authors

This briefing is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed. If you have any further queries, please contact the below authors:



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