



Set to rights

Criminal Justice (Corruption Offences) Act 2018

1. Introduction

The Criminal Justice (Corruption Offences) Act 2018 (the **"Act"**) has been signed into law. A further Order is awaited to bring the Act into operation.

The Act consolidates and modernises anti-corruption legislation that dates back to 1889. It is part of the government's commitment to tackle white-collar crime in Ireland. The Act repeals the current legislative anti-corruption framework and gives legislative effect to recommendations in the Final Report of the *Tribunal of Inquiry into Certain Planning Matters and Payments* (the Mahon Tribunal) through the introduction of new offences.

2. Whom does the Act apply to?

Until now, anti-corruption legislation was targeted at public officials and was designed to stop individuals from influencing public policy. The Act is broader in scope than previous Acts and applies to individuals, companies, voluntary bodies, foreign and Irish officials including officers, directors, employees and members of Irish public bodies, which in turn is defined as including semi-state bodies.

Significantly, the Act provides for criminal liability of corporate bodies and senior management where an offence under the Act is committed. This is explained further below.

3. Types of Corruption: the Offences and Penalties

The offences under the Act are predicated upon the concept of acting 'corruptly', which is defined as including acting with an improper purpose. Throughout the Act, a 'bribe' is expressed to be a 'gift, consideration or advantage'. Significantly, the bribe does not have to actually be given or accepted to commit the offence; *agreement* to give or accept the bribe is sufficient. The offences set out below apply to the public and private sector.

a) Active and passive corruption

Section 5 of the Act provides for the offence of active corruption (bribe giving) and passive corruption (bribe taking). A person guilty of an offence under section 5 is liable on summary conviction to a fine of €5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 10 years; and forfeiture of the property constituting the bribe.

b) Active and passive trading in influence

Section 6 creates a new offence that prohibits the active and passive bribery of a person who may be in a position to exert an improper influence over an act of a public official. A person guilty of the offence of active or passive trading in influence is liable on summary conviction to a fine of €5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 5 years; and forfeiture of the property constituting the bribe.

c) Corruption in relation to office, employment, position or business

Under section 7, it is an offence for an Irish official to corruptly obtain a bribe from any person and to use confidential information obtained in the course of public office for the purpose of corruptly obtaining a bribe. A person guilty of an offence under section 7 is liable on summary conviction to a fine of €5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 10 years; and forfeiture of the property constituting the bribe.

d) Bribery to facilitate an offence

Section 8 of the Act creates a new offence of facilitating bribery. Where a person gives a bribe, and knows or ought reasonably to know, that it will be used to facilitate the commission of a corruption offence, that person shall also be guilty of an offence. A person guilty of an offence under section 8 is liable on summary conviction to a fine of €5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 10 years; and forfeiture of the property constituting the bribe.

e) Creating or using a false document

Under section 9, it is an offence for a person to corruptly create or use a document that the person knows or believes contains a statement that is false or misleading. The person must intend that another person rely on that document to their own prejudice or the prejudice of another person. 'Document' is broadly defined in the Act to include data held electronically on devices such as smartphones. A person guilty of an offence under section 9 is liable on summary conviction to a fine of €5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 10 years.

f) Intimidation

It will be an offence to threaten to harm an individual in order to corruptly influence them. This offence mirrors the offence of bribery and recognises that corruption can be linked to negative threats and not solely the inducement of a bribe.

4. Corporate liability – Act Now

Under section 18(1), a body corporate will be criminally liable where a director, manager, secretary, employee, agent or subsidiary commits an offence under the Act with the intention of obtaining or retaining business for the body corporate or an advantage in the conduct of business for the body corporate. A body corporate guilty of such an offence will be liable on summary conviction to a fine of €5,000 and on indictment to an unlimited fine.

Crucially, it will be a defence to a prosecution under section 18 where the body corporate proves that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. This means that companies and public bodies will need to develop and roll out anti-corruption policies and staff training to take account of the new legislative regime.

5. Senior officer liability – Beware

Under section 18(3) where an offence is committed by a body corporate and it is proved that the offence was committed with the consent, connivance or wilful neglect of senior officers, that person, as well as the body corporate, shall be guilty of an offence. A person guilty of an offence under section 18(3) will be liable on summary conviction to a fine of

€5,000 and/or 12 months imprisonment, and on indictment to an unlimited fine and/or imprisonment of up to 10 years.

Importantly, it is not necessary for the body corporate to have been convicted of the offence in order for liability to attach to senior officers, only that the offence is committed¹.

6. Also of note:

a) Presumptions:

The Act provides for a number of rebuttable presumptions relating to bribes given to/received by or on behalf of an official or a connected person, and donations to members of the government (where such donations are excessive value donations and impermissible donations).

Where it is proven that a bribe or donation was given by a person with an interest in the functions of that official, a presumption arises that it was given corruptly.

b) Extra Territorial effect

Corruption offences are given extra-territorial effect under the Act similar to the provisions of the Bribery Act 2010 in the United Kingdom. A person may therefore be liable for offences committed outside the State where the act in question would constitute an offence if committed within the State.

How Eversheds Sutherland can help

The Eversheds Sutherland Corporate Crime & Investigations Group has considerable experience of working with clients to develop their anti-corruption policies.

We have performed risk assessments and conducted workshops and interviews for global companies in various sectors across Europe, the US, the Middle East and Asia.

We have extensive experience of fraud and corruption investigations. We know where and how problems arise and how internal control systems can be undermined.

Eversheds Sutherland, with its strong presence across Europe, Asia, the Middle East and America can support and assist you in any jurisdiction in which you transact business. We are well positioned to help integrate Ireland's new laws into your international model.

¹ See *DPP v Hegarty* [2011] 4 I.R. 635 and *Fingleton -v- The Central Bank of Ireland* [2016] IEHC 1.

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