

## Group Briefing

November 2017

# Reduce the risk of criminal liability: put anti-corruption policies in place

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

Companies and other corporate bodies operating in Ireland will risk criminal liability if they do not have adequate anti-corruption policies and procedures in place, once proposed anti-corruption legislation becomes law.

In a radical overhaul of anti-corruption law in Ireland, the Irish Government recently published the Criminal Justice (Corruption Offences) Bill 2017. One of several measures in the Government's new White Collar Crime Package, the legislation introduces new offences and stricter penalties.

The Bill repeals and replaces previous legislation on anti-corruption and bribery (the Prevention of Corruption Acts 1889 to 2010), consolidating Irish law on corruption into a single piece of legislation.

#### GLOBAL SCOPE

The provisions of the Bill extend to acts of corruption occurring outside Ireland.

Irish citizens and officials and Irish registered corporate bodies who commit acts which would constitute a corruption offence if committed in Ireland may be prosecuted in Ireland.

#### NEW OFFENCES

- » **Active and passive corruption** – the offering, giving, accepting and obtaining of bribes in relation to one's office, employment, position or business
- » **Active and passive trading in influence** – bribery of, and acceptance of bribes by, persons in a position to influence Irish or foreign officials
- » **Corruption in office**
  - commission of an act by an Irish official in relation to his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage
  - use by an Irish official of confidential information acquired in the course of duty to corruptly obtain a gift, consideration or advantage

**NEW OFFENCES (CONT.)**

- » **Giving of gifts** – the giving of gifts, consideration or advantage to third parties, knowing that the third party will use the gift to facilitate the commission of a corruption offence
- » **Creating or using of a false document** – the corrupt creation or use of a document by a person who knows or believes the document to contain a false or misleading statement, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of that person or another person
- » **Intimidation** – threatening harm to a person, with the intention of corruptly influencing that person or another person to do an act in relation to that person's office, employment, position or business

**CONSEQUENCES FOR COMPANIES**

- » Companies will be liable for the actions of directors, managers, secretaries, officers, shadow directors, employees, agents or subsidiaries who commit a corruption offence for the benefit of the company
- » It will be a defence for the company to show that that all due diligence and all reasonable steps were taken to avoid the commission of the offence
- » Similarly, officers who consent to, or take part in, the commission of an offence by a company are also guilty of that offence

**KEY PENALTIES**

5 years' imprisonment and/or unlimited fine on conviction on indictment for active and passive trading in influence

10 years' imprisonment and/or unlimited fine on conviction on indictment for all other offences

Possible removal from office of public officials

Possible prohibition on seeking certain public appointments for up to 10 years

Forfeiture of land, property and cash on summary conviction for certain offences

While the Bill is in the early stages of the legislative process, now is the opportune time for organisations to put in place anti-corruption policies or to review policies already in place. These policies and procedures may prove essential in the event of a prosecution for a corruption offence and will form part of the defence that the company took all due diligence and all reasonable steps to avoid the commission of the offence.

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