

## Group Briefing

November 2018

# Major Reforms to Combat Corporate Crime Recommended

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Ireland will move further away from its perceived “light touch” regulatory regime if recommendations made by the Law Reform Commission (LRC) in a recent [report](#) are implemented.

The extensive report recommends sweeping reforms of the regulation of corporate and financial crime in Ireland, with over 200 recommendations set out in its 800 pages. While this may be an indication of what is to come in this area, Government support and legislative change will be required to bring any of the recommendations into effect.

### KEY RECOMMENDATIONS:

#### 1. Establishment of a New Corporate Crime Agency

One particular recommendation that seems likely to be implemented is the creation of a new independent corporate crime agency to combat corporate crime. The LRC recommends that this agency be staffed by a mix of experienced inter-disciplinary personnel, including forensic accountants, Revenue Commissioners officials, members of An Garda Síochána (the Irish police) and criminal law practitioners.

The recommendation for this multidisciplinary agency comes on the back of the procedural failings of the Office of the Director of Corporate Enforcement (ODCE) to deal with

complex corporate criminal trials on indictment and the proven effectiveness of the Criminal Assets Bureau, which is made up of a similar mix of experienced personnel. The LRC also recommends that a dedicated unit be established within the Office of the Director of Public Prosecutions to work in tandem with the corporate crime agency.

This recommendation is similar to the proposal in the Government’s [White Collar Crime Package](#) that the ODCE be established as an independent agency with powers to recruit and enlist expert staff.

An Garda Síochána have also voiced their support for the establishment of a single overarching regulatory body in this area, highlighting the inefficiency of the current situation whereby multiple regulators may be conducting investigations into the same set of circumstances unknown to each other.

#### 2. Increased Powers for Regulators

In an effort to increase the effectiveness of financial and economic regulators such as the Competition and Consumer Protection Commission, the LRC has

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.

recommended that regulators' powers should be strengthened and standardised by the introduction of a "regulatory toolkit" of core powers.

In particular, the LRC recommends that two key powers of the Central Bank of Ireland be made available to other regulators:

- » the power to impose administrative financial sanctions (subject to court oversight) with a maximum sanction against a company of €10 million or 10% of turnover, or €1 million against an individual.
- » the power to enter into regulatory enforcement agreements, whereby a regulated entity can enter into a settlement with the regulator that can include financial sanctions, consumer redress schemes and commitments to introduce compliance policies.

The introduction of a common legislative template of powers should increase clarity in regulated industries.

### 3. Reform of Offences to Combat Reckless Risk-Taking

The LRC recommends that existing corporate offences such as fraud be amended so that they would also be committed where a person or corporate body is reckless as to whether they are committing an offence. The idea behind this is to combat the "egregiously reckless risk-taking" that contributed to the financial crisis.

In particular, the LRC recommends that the offences under the Criminal Justice (Theft and Fraud Offences) Act 2001 be amended to include recklessness. Currently offences such

as false accounting require that a defendant knowingly or intentionally commit the offence.

The LRC does not recommend the introduction of an offence of reckless trading, taking the view that an offence of this nature could have a chilling effect on necessary commercial risk-taking in Ireland.

While the LRC's recommendations may cause apprehension among those tasked with compliance, it remains to be seen if and when the Government will ultimately implement the proposed reforms. However, it seems clear that there is a growing momentum to commit to history the "light touch" regulatory model of the pre-financial crisis era.

#### FURTHER RECOMMENDATIONS FROM THE REPORT

- » **Deferred Prosecution Agreements** – the introduction of DPAs that would allow prosecuting regulators to enter into agreements with corporate defendants that would include a series of conditions that the defendant must comply with over an agreed period. If the defendant complies with the agreement, they can avoid prosecution entirely. DPAs operate effectively in the UK and the US.
- » **Defence of Due Diligence** – the introduction of a defence to certain corporate crime offences that the individual or entity exercised all due diligence to prevent the offence. This recommendation is designed to encourage corporates to introduce policies and procedures aimed at preventing corporate crime. This defence has been included in the **Criminal Justice (Corruption Offences) Act 2018**, where it is a defence to have taken "all reasonable steps and exercised all due diligence" to avoid the commission of an offence.
- » **Criminal Liability of Corporates** – the overhaul of the scheme of liability of corporate bodies so that it reflects the reality of delegated decision-making within large corporates. The test for corporate liability would vary based on the type of fault required by the offence.
- » **Criminal Liability of Managers** – the introduction of a new statutory scheme of derivative criminal liability of managerial agents. Under the proposed scheme, when a manager's control or authority over the conduct of the corporate body culpably contributes to the corporate body's offending, the manager can be held liable as if he or she was guilty of the corporate offence. (Read more about the current position on the criminal liability of managers [here](#).)

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