

Irish Bribery and Anti-Corruption Law in Focus

The Criminal Justice (Corruption Offences) Act 2018 ("Act") came into force on 30 July 2018, consolidating Irish law on bribery and corruption and introducing a new form of corporate liability where a company is guilty of an offence if anyone acting on its behalf is found guilty of corruption.

Consistent with efforts in many other jurisdictions, the Act is a key Irish measure to prevent and deter white collar crime.

Scope

The Act applies to individuals, companies (both regulated and unregulated), voluntary bodies, Irish¹ and foreign² officials including officers, directors and of Irish public and semi-state bodies, making it much broader than previous legislation addressing bribery and corruption.

Concepts of Corruptly and Bribe

The term 'corruptly' is used in determining what an offence is under the Act. It is defined non-exhaustively as including acting with an improper purpose personally (e.g. by making false / misleading statements or withholding information); or by influencing another person.

A 'bribe' is referred to as "*a gift, consideration or advantage*" to a person as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business. A

bribe can be given or received directly or indirectly, alone or with another person. The bribe does not need to be actually given or received as offering, agreeing to give or requesting are also specified as being offences.

Implications for Companies

Unless it can be shown that it took "*all reasonable steps and exercised all due diligence to avoid the commission of the offence*", a body corporate is liable in circumstances where its: (a) director, manager, secretary, officer (or persons purporting to act in that capacity); (b) shadow director; or (c) employee, agent or subsidiary, commit corruption offences with the intention of obtaining or retaining business for the body corporate or an advantage in the conduct of business for that body corporate.

Implications for Company Directors / Officers

Where an offence under the Act is committed by a body corporate and it is proved that the offence was committed with the connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate (or a person purporting to act in that capacity) that person is guilty of an offence.

¹ 'Irish official' means, in summary, a member of Dáil Éireann, Seanad Éireann or the European Parliament representing Ireland or any person employed by or acting for or on behalf of the public administration of the State.

² 'Foreign official' means, in summary, a member of the government or parliament of any other state, a member of the European Parliament other than a person who is such a member by virtue of the European Parliament Elections Act 1997 or any person employed by or acting for or on behalf of the public administration of any other state.

Penalties

If found guilty of an offence under the Act, a company will be liable on summary conviction to a €5,000 fine; and on indictment an unlimited fine.

A guilty individual will be liable on summary conviction to a €5,000 fine and / or 12 months imprisonment; and on indictment to an unlimited fine and imprisonment for up to 10 years.

Key Actions

Companies should have the following in place in order to mitigate their corruption risk:

- (a) Anti-bribery and corruption, gifts and entertainment policies;
- (b) Procedures to ensure robust implementation of relevant policies; and
- (c) Staff training.

Due Diligence for Mergers and Acquisitions

Given the potentially significant risks to a buyer acquiring a company that has been involved in bribery and corruption, (particularly in the context of the risk of commission of an offence under the Act), anti-corruption due diligence has become an accepted component of transactional diligence for mergers and acquisitions.

While thorough diligence is not guaranteed to identify specific acts of past misconduct, a well-executed diligence process will highlight structural risks and compliance weaknesses within the target.

Buyers wish to understand the target's corruption risk factors including where it does business, its customers and the extent to which it relies on third parties to conduct business on

its behalf in order to judge whether the target is adequately managing corruption risk and is not engaging in corrupt practices.

An assessment of the adequacy of anti-corruption procedures within a target will involve a review of the company's anti-bribery and corruption, gifts and entertainment policies as well as evidence of measures to demonstrate robust implementation of associated procedures and training.

EU Proposals

As a further reflection of the heightened focus in this area, the European Commission on 3 May 2023 presented proposals to harmonise and strengthen anti-corruption rules and penalties across the EU, as well as a proposal to establish an anti-corruption agency in each member state³. This will mean a further tightening of the rules in Ireland and significant amendments to the Act to incorporate the proposed changes once finalised.

Further Information

Further information on our Irish Financial Services Regulatory Group and Corporate Group and the services we provide is available on our website⁴ and in our brochure⁵.

If you would like to learn more, please contact your usual Maples Group contact or any of the persons listed below:

Financial Services Regulatory

Stephen Carty

+353 1 619 2023

stephen.carty@maples.com

Lorna Smith

+353 1 619 2125

lorna.smith@maples.com

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https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_23_2517/QANDA_23_2517_EN.pdf

⁴ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

⁵ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group--core-services.pdf>

Philip Keegan

+353 1 619 2122

philip.keegan@maples.com

Alison Gibney

+353 1 619 2158

alison.gibney@maples.com

Corporate

Colm Rafferty

+353 1 619 2058

colm.rafferty@maples.com

Jordan O'Brien

+353 1 619 2710

jordan.o'brien@maples.com

Morgan Pierse

+353 1 619 2746

morgan.pierse@maples.com

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