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ANTICORRUPTION ON THE EMERALD ISLE

by Eric Brotten



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In the summer of 2018, the Criminal Justice (Corruption Offences) Bill passed through the houses of Ireland's parliament, the Oireachtas, and was enacted on June 5 and commenced July 30.¹ The Criminal Justice (Corruption Offences) Act (the Act) modernizes and consolidates Irish laws previously covering crimes such as bribery and corruption [e.g., The Prevention of Corruption Acts (1889 – 2010) and the Criminal Justice (Theft and Fraud) Offences Act, 2001].² The Act has roots in earlier initiatives proposed by the Irish government to tackle corruption in response to the Mahon Tribunal, the Organisation for Economic Co-operation and Development (OECD), and European Union recommendations.³

Overview of the Act

The Act is broader in scope than previous legislation and creates several new corruption offenses, such as:

- ◆ Criminalizing direct and indirect corruption in both the public and private sector, where:
 - "Corruptly" is defined as "acting with an improper purpose personally or by influencing another person,"⁴

- A "bribe" is considered "a gift, consideration, or advantage" given to "any person doing an act in relation to his or her office of employment, position or business,"⁵ and
- The bribe can be given or accepted, or agreed to be given or accepted⁶
- ◆ Holding corporations (and potentially directors and management) liable for corruption offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offence,⁷ and
- ◆ Including a presumption of corruption in certain circumstances.⁸

Additionally, the Act is extra-territorial,⁹ extending beyond Ireland, and in many ways, emulates similar provisions of the United Kingdom's Bribery Act 2010 (UKBA).¹⁰ Lastly, the Act increased penalties to up to 10 years imprisonment and unlimited fines.¹¹

A detailed list of crimes in the Act includes¹²:

- ◆ **Active and passive corruption:** Bribe giving and bribe taking.

- ◆ **Active and passive trading in influence:** Exerting or claiming to exert influence over a public official's decision making.
- ◆ **Corruption in relation to office, employment, position, or business:** As an Irish official, corruptly receiving a bribe or using confidential information to receive a bribe.
- ◆ **Giving gift, consideration, or advantage** that may be used to facilitate offense under the Act ("bribe"): Giving a bribe, where the giver knows or ought to reasonably know that it will be used to commit a corruption offense.
- ◆ **Creating or using a false statement in a document:** Corruptly creating or using a document that the person knows or believes to contain a statement which is false or misleading, with the intent of inducing another person to do an act to his or her prejudice or that of another person.
- ◆ **Intimidation:** Corruptly threatening harm to a person with the intention of influencing that person or another to carry out an act in relation to his or her office, employment, position, or business.

Practical steps to ensure compliance

If your firm has operations, does business, or has staff in Ireland, there are several quick-hit tasks you can perform to assess compliance status. For many firms that conduct business in or with other firms in the US or UK, a compliance program likely already exists to support compliance with the US Foreign Corrupt Practices Act (FCPA) and the UK's Bribery Act (UK BA).¹³ Depending on the robustness of your FCPA or Bribery Act compliance programs, there's a good chance you are already highly compliant with the Act, and you can implement a supporting compliance program with minimal scope and minimal resource requirements.

Above any baseline compliance achieved from existing US or UK programs, good practices could start with a risk-based

proportionality review of policies and procedures, noting where the Act could or should be mentioned alongside US and UK peers. Next, a compliance program could conduct an awareness and training program (e.g., a concise slide presentation on the Act) for management, sales, finance, and accounting employees; and for general staff, a top-down communication with brief overview of the Act and practical steps on what the firm is doing or has already done to address compliance. Last, any existing contracts, trainings, or vendor diligence documents that reference either the FCPA, the Bribery Act, or both should be updated to include reference to the Act. Unfortunately, if your firm does not already have a baseline anticorruption compliance program, you will have a much larger implementation scope and resource requirement. 

Endnotes

1. See Criminal Justice (Corruption Offences) Act, 2018 (Act No. 9/2018), Pt. 1, at 5 (Ir.), <http://bit.ly/2ymRF1h>
2. Criminal Justice (Corruption Offences) Bill, 2017 (Explanatory Memorandum), at 1 (Ir.), <http://bit.ly/2QDIsc1>
3. *Idem*.
4. Criminal Justice (Corruption Offences) Act, Pt. 1, at 6.
5. *Idem*, Pt. 2, at 8 – 9.
6. *Idem*.
7. *Idem*, Pt. 5, at 21.
8. *Idem*, Pt. 4, at 13 – 17.
9. *Idem*, Pt. 3, at 11 – 13.
10. See Ministry of Justice, The Bribery Act 2010 Guidance, at 9 (2011), <http://bit.ly/2aKo0CD>
11. Criminal Justice (Corruption Offences) Act, Pt. 5, at 17 – 20.
12. See *idem*, Pt. 2.
13. See generally Ministry of Justice, *supra* note 10 (includes an appendix of case studies explaining examples of compliance measures and approaches).

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- ◆ In summer 2018, Ireland consolidated its anticorruption laws into a single law, the Criminal Justice (Corruption Offences) Act (the Act).
 - ◆ The Act criminalizes direct and indirect corruption in both the public and private sector.
 - ◆ The Act holds corporations liable for offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offense.
 - ◆ The Act is extra-territorial, extending beyond Ireland, and, in many ways, similar to the United Kingdom's Bribery Act 2010 (UKBA).
 - ◆ Compliance requirements and accompanying compliance implementation programs for the Act will be similar to those for anticorruption laws in other nations, such as the US Foreign Corrupt Practices Act and the UK's Bribery Act.