



June 2018

## Company Law Update

### White-Collar Crime

The Criminal Justice (Corruption Offences) Act 2018 has been enacted. The Act is one aspect of the intended reform of the law relating to corruption and corporate crime in Ireland. A number of significant changes have been made by the Act:

- ▣ A new offence called “trading in influence” has been created by the Act, which expands the categories of people to whom a gift or advantage may not be corruptly offered or given in order to improperly influence the actions of an official. It is no defence to show that the alleged ability to influence an official was not in fact exerted or did not lead to the intended result.
- ▣ A new offence called “intimidation” has been created by the Act, which makes it an offence to directly or indirectly threaten harm to a person with the intention of corruptly influencing a person to do an act in relation to his or her office, employment or business.
- ▣ The presumption of corruption has been extended so that any gift or consideration by any person is presumed to have been given corruptly if s/he had an interest in the discharge by the official of his/her functions of any of the following areas:
  - tenders and contracts;
  - grants, payments and credit facilities of any kind;

For further information on any of the issues discussed in this article please contact:



**Lorcan Tiernan**

DD: + 353 (0)1 673 1736

[lorcan.tiernan@dilloneustace.ie](mailto:lorcan.tiernan@dilloneustace.ie)



**Adrian Benson**

DD: + 353 (0)1 673 1705

[adrian.benson@dilloneustace.ie](mailto:adrian.benson@dilloneustace.ie)

- passports and visa or immigration permissions;
  - the appointment of a person to an office, position or employment;
  - the investigation or prosecution of offences;
  - the administration of justice; and
  - the performance by the Central Bank of Ireland and the National Asset Management Agency of their functions.
- A new offence has been created which prohibits an Irish official from using confidential information obtained in the course of his or her holding of an office or to do any act for the purpose of corruptly obtaining a gift or advantage.

### **Companies (Accounting) Act 2017**

Section 80 of the Companies (Accounting) Act 2017 will come into effect on 9 June 2018. This amends definitions of “EEA State” and “External Company” in Section 1300 of the Companies Act 2014.

Currently, only external limited companies (whether EEA or non-EEA) which establish a branch in Ireland are required to register with the Companies Registration Office and to make certain filings. External unlimited companies are not required to do so. It is currently possible for external limited companies to get around these registration and filing requirements by incorporating a subsidiary which is an external unlimited company and establishing a branch of that subsidiary in Ireland. Section 80 seeks to prevent this by imposing the same requirements on external unlimited companies which are subsidiaries of external limited companies.

### **Variation Clauses**

The Supreme Court of the United Kingdom has decided in a recent case that a contract which includes a clause requiring that any amendments be in writing cannot be amended by subsequent oral agreement between the parties. A clause to this effect is often included as standard in commercial contracts and corporate transactions, as (i) it makes it difficult to undermine the written agreement by claiming that it was later changed orally, (ii) it avoids disputes as to what amendments were agreed orally, and (iii) it helps organisations to ensure compliance with internal procedure and delegation of authority.

There had been some suggestion that the parties to such a contract might remain free to agree orally to amend a contract which contains this type of variation clause, as an agreement does not usually need to be reduced to writing in order for it be binding on the parties. However the decision in *Rock Advertising Limited v MWB Business Exchange Centres Limited* indicates that an appropriate variation clause can prevent a contract from being amended orally.

Legal decisions in the UK do not have effect in Irish courts but can have persuasive value, especially in relation to issues such as this which have not been the subject of a relatively recent superior court judgment.

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**Dillon Eustace**

## DILLON EUSTACE

### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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