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AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ), 2000
PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2000

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Amendment of section 1 of Act of 1906.
 3. Corruption occurring partially in State.
 4. Corruption occurring outside State.
 5. Corruption in office.
 6. Offences by bodies corporate.
 7. Short title, collective citation and construction.
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Acts Referred to

Prevention of Corruption Act, 1906	1906, c. 34
Prevention of Corruption Acts, 1889 to 1995	
Public Bodies Corrupt Practices Act, 1889	1889, c. 69



AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ), 2000
PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2000

BILL

entitled

5 AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN
UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE
TREATY ON EUROPEAN UNION ON THE FIGHT
AGAINST CORRUPTION INVOLVING OFFICIALS OF
10 THE EUROPEAN COMMUNITIES OR OFFICIALS OF
MEMBER STATES OF THE EUROPEAN UNION DONE
AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE
CONVENTION ON COMBATING BRIBERY OF FOR-
EIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSI-
15 NESS TRANSACTIONS DRAWN UP UNDER THE AUS-
PICES OF THE ORGANISATION FOR ECONOMIC CO-
OPERATION AND DEVELOPMENT AND ADOPTED AT
PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND
THE CRIMINAL LAW CONVENTION ON CORRUPTION
20 DRAWN UP UNDER THE AUSPICES OF THE COUNCIL
OF EUROPE AND DONE AT STRASBOURG ON THE
27th DAY OF JANUARY, 1999, AND FOR THAT PUR-
POSE TO AMEND CERTAIN ENACTMENTS AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

25 **1.—(1)** In this Act “the Act of 1906” means the Prevention of Interpretation.
Corruption Act, 1906.

(2) References in this Act to an act include references to an omis-
sion and references to the doing of an act include references to the
making of an omission.

30 (3) References in this Act to any enactment shall be construed as
references to that enactment as amended, adapted or extended by
any subsequent enactment including this Act.

2.—The Act of 1906 is hereby amended by the substitution of the Amendment of
following section for section 1: section 1 of Act of
1906.

35 “1.—(1) An agent or any other person who—

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept or attempts to obtain,

for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence. 5

(2) A person who—

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence. 10

(3) A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence. 15 20

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or 25

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

(5) In this Act—

'agent' includes— 30

(a) any person employed by or acting for another,

(b) (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid), 35

(ii) a member of Dáil Éireann or Seanad Éireann,

(iii) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann), 40

(iv) the Comptroller and Auditor General,

(v) the Director of Public Prosecutions,

(vi) a judge of a court in the State,

(vii) any other person employed by or acting on behalf of the public administration of the State, and

(c) (i) a member of the government of any other state,

(ii) a member of a parliament, regional or national, of any other state,

(iii) a member of the European Parliament,

(iv) a member of the Court of Auditors of the European Communities,

(v) a member of the Commission of the European Communities,

(vi) a public prosecutor in any other state,

(vii) a judge of a court in any other state,

(viii) a judge of any court established under an international agreement to which the State is a party,

(ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and

(x) any other person employed by or acting on behalf of the public administration of any other state;

‘consideration’ includes valuable consideration of any kind;

‘principal’ includes an employer.”.

25 **3.**—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State. Corruption occurring partially in State.

30 **4.**—(1) Subject to *subsection (2)* of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 of the Act of 1906, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State. Corruption occurring outside State.

35 (2) *Subsection (1)* shall apply only where the person concerned is a person referred to in *subsection (5)(b)* of the said section 1.

40 **5.**—(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable— Corruption in office.

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in subsection (5)(b) of section 1 of the Act of 1906. 5

Offences by bodies corporate.

6.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2000*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person 10 being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 15

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 20

Short title, collective citation and construction.

7.—(1) This Act may be cited as the Prevention of Corruption (Amendment) Act, 2000.

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2000, and shall be construed together as one. 25



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**AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ), 2000
PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2000**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The purpose of this Bill is to strengthen the law on corruption and enable Ireland to ratify three international agreements, namely—

- (i) the Convention drawn up on the basis of Article K 3(2)(c) of the Treaty on European Union on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, done at Brussels on the 26th day of May, 1997;
- (ii) the Convention on Bribery of Foreign Public Officials in International Business Transactions, drawn up under the auspices of the Organisation for Economic Co-operation and Development and adopted at Paris on the 21st day of November, 1997; and
- (iii) the Criminal Law Convention on Corruption, drawn up under the auspices of the Council of Europe and done at Strasbourg on the 27th day of January, 1999.

Exchequer Costs and Staffing Implications

This Bill will not give rise to direct exchequer costs and has no staffing implications.

Section 1 (Interpretation)

This defines the Prevention of Corruption Act, 1906, as the Act of 1906 so as to avoid repetition of the full title of this Act elsewhere in the Bill. It also contains standard interpretative provisions.

Section 2 (Amendment of section 1 of Act of 1906)

This section replaces section 1 of the Act of 1906. Only certain elements of the section are actually being changed, but for convenience of reference the section is being completely replaced rather than partially amended.

There are three main changes to section 1 of the Act of 1906 which deals with the offence of corruption of or by an agent. First, the wording of the offence is being revised in order to make it more comprehensive. The revised offence will apply not only, as at present, to corruption of an agent, but also to corruption of a third party, for example a spouse of the agent, with a view to influencing the conduct of the agent. Second, the definition of “agent” is being extended to

cover categories of office holders and officials, both national and foreign, not presently covered by the Act of 1906. Third, the maximum penalty for the offence is being increased from 7 years imprisonment and/or a fine of £50,000 to 10 years imprisonment and an unlimited fine.

Section 3 (Corruption occurring partially in State)

The three Conventions to which this Bill relates require the national law of participating states to apply to corrupt acts which occur wholly or partly on their territories. An act of corruption could occur partly in Ireland where, for example, an offer of a bribe is made abroad but received in Ireland. This section clarifies Irish jurisdiction in such cases by providing that a person may be tried in Ireland for the offence of corruption if any element of the offence occurred here.

Section 4 (Corruption occurring outside State)

Normally, Irish criminal law is territorial in its jurisdiction, that is to say that it applies only to acts done in Ireland, but there are exceptions, and one is proposed in this instance. This section extends Irish jurisdiction extra-territorially to corruption abroad involving Irish office holders or officials. Otherwise, if the offence were limited to the national territory, an Irish office holder or official could evade the Prevention of Corruption Acts by accepting a bribe while outside Ireland.

Section 5 (Corruption in office)

This section creates a new offence of corruption in office. It applies to Irish office holders and officials and seeks to deal with a situation not covered by the offence of corruption. The offence of corruption, while broad, deals only with situations where an office holder or official seeks or accepts a bribe from someone in return for doing or not doing some act. It does not deal with a situation where an office holder or official acts corruptly without the involvement of anyone else, for example by making a biased decision in order corruptly to benefit a member of his or her family. The new offence will therefore criminalise any act or omission by an Irish office holder or official done with the intention of corruptly obtaining a gift, consideration or advantage for that office holder or official or any other person.

Section 6 (Offences by bodies corporate)

This is a standard provision enabling responsibility for an offence by a corporate body, in this case corruption, to be attributed to certain of its officers, so that individuals as well as the corporate body can be held liable for the offence.

Section 7 (Short title, collective citation and construction)

This is a standard technical provision setting out the title of the Bill and providing that it and the Prevention of Corruption Acts, 1889 to 1995, may be cited together as one.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Eanáir, 2000.*