

Overview on anti-corruption rules and regulations in IRELAND

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I. What is the anti-corruption legal framework in your country (including brief overview on active / passive bribery, bribery of foreign officials, and commercial bribery, including also relevant case law)?

Anti-corruption / bribery is governed under the Criminal Justice (Corruption Offences) Act 2018 (the "**Corruption Act**") which repealed and replaced previous legislation relating to bribery and corruption offences. The Corruption Act includes the following offences:

1. Active and Passive Corruption

It is an offence under the Corruption Act for a person to either directly or indirectly, by himself or with another person (a) corruptly offer or (b) corruptly give or agree to give a gift, consideration or advantage to any person as an inducement to, or reward for, or otherwise an account of, any person doing an act in relation to his or her office, employment, position or business.

This offence prohibits bribery of any person which includes (but is not limited to) Irish¹ or foreign public officials.² 'Corruptly' is defined broadly under the Corruption Act to include acting with an improper purpose personally or by influencing another person, whether:

- by means of making a false or misleading statement;
- by means of withholding, concealing, altering or destroying a document or other information; or
- by other means.

¹ Irish Official' is broadly defined to include directors and employees of Irish public bodies and persons remunerated by the Irish Government, or employed by or acting for or on behalf of the public administration of the state.

2. Active and Passive Trading in Influence

It is an offence under the Corruption Act to directly or indirectly corruptly:

- offer, give, or agree to give, a gift, consideration or advantage in order to induce another person to exert an improper influence over an act of an official (including an Irish or foreign official) in relation to the office, employment, position or business of that official;
- request, accept, obtain, or agree to accept a gift, consideration or advantage on account of a person promising or asserting the ability to improperly influence an official (including an Irish or foreign official) to do an act in relation to their office, employment, position or business.

For the purposes of this offence, it is immaterial whether or not the alleged ability to exert an improper influence exists, the influence is exerted, the supposed influence leads to the intended result or the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence.

3. Corruption by an Irish Official in relation to his / her Office, Employment, Position or Business

It is an offence under the Corruption Act for an Irish official to:

- directly or indirectly do an act in relation to their office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for themselves or any other person;
- use confidential information obtained in the course of their office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for themselves or for any other person.

4. Giving a Gift, Consideration or Advantage to Facilitate an Offence under the Corruption Act

It is an offence under the Corruption Act to give a gift, consideration or advantage to another person where the donor knows, or ought reasonably to know, that the gift, consideration or advantage, or a part of it, will be used to facilitate the commission of an offence under the Corruption Act.

5. Creating or Using a False Document

It is an offence under the Corruption Act to directly or indirectly create or use a document that a person knows or believes to contain a statement which is false or misleading, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of that person or another person.

6. Intimidation

It is an offence under the Corruption Act to directly or indirectly threaten harm to a person with the intention of corruptly influencing that person or another person to do an act in relation to his or her office, employment, position or business.

Statutory Presumptions

The Corruption Act provides for a number of “statutory presumptions” meaning that certain conduct will be presumed to be corrupt unless the contrary is proven including:

- A gift, consideration or advantage given to or received by an Irish or foreign official from a donor who has an interest in the discharge by the official of the carrying out of their function or the failure to carry out their function;
- A gift, consideration or advantage given to or received by an Irish or foreign official who performed or omitted to perform their functions so as to give rise to an undue benefit or advantage to the donor;
- A political donation of a specified type and form (exceeding certain prescribed values under legislation) where the person concerned failed to comply with the applicable reporting and remitting procedures and the donor had an interest in the person doing the act in relation to his or her office, employment, position or business;
- An interest in land or other property which has not been disclosed by an Irish Official in their statement of registrable interests in accordance with the Ethics Acts.

Caselaw

There has not yet been any prosecution under the new Corruption Act. However, numerous prosecutions were brought under the previous corruption legislation (replaced by the Corruption Act). We highlight below a case decided by the Irish Supreme Court in relation to a prosecution brought for corruption offences.³

In 2012, the defendant (Fred Forsey, a county councillor) was convicted and sentenced to six years’ imprisonment on each of six counts of corruption brought against him which was the longest prison sentence ever imposed by the Irish Courts for corruption offences. The alleged corruption related to attempts to persuade officials and councillors in a County Council to grant permission for a proposed planning development and to alter the zoning of the land relating to the development. The defendant appealed his conviction and in 2019, the Supreme Court overturned his conviction on the basis that the trial process had breached the defendant’s right to be presumed innocent as a result of an instruction to the jury that, if they accepted a gift was given corruptly to Mr Forsey, the onus was on him to prove, on the balance of probabilities, that the money was not given corruptly. The Supreme Court clarified that in a case of this nature, the jury should be instructed that the prosecution has the burden of proving beyond reasonable doubt all of the elements of the corruption offences except for corrupt intention and they are to take corrupt intention as having been proved unless there is something in the evidence that makes them doubt that the accused had a corrupt motive.

³ *DPP v Forsey* [2019] ILRM 73

II. Does this framework also cover extra-territorial corruption?

Yes. The Corruption Act covers corruption that occurs outside of Ireland subject to certain conditions (outlined below).

A person may be prosecuted in Ireland for an offence under the Corruption Act if any one or more of the acts alleged to constitute an offence were committed in Ireland, on an Irish ship or an aircraft registered in Ireland, notwithstanding that other acts alleged to constitute an offence were committed outside of Ireland.

Further, Irish citizens, Irish officials acting in their capacity as Irish officials, individuals with their principal residence in Ireland for the twelve months preceding the act and companies and corporate bodies registered in Ireland can be held liable under the Corruption Act for acts committed outside of Ireland where those acts constitute an offence under the Corruption Act and in the jurisdiction where they have occurred. The relevant offences are:

1. Active and Passive Corruption;
2. Active and Passive Trading in Influence;
3. Corruption by an Irish Official in relation to his/her Office, Employment, Position or Business;
4. Giving a Gift, Consideration or Advantage to facilitate an Offence under the Corruption Act; and
5. Creating or Using a False Document.

The extra-territorial effect of the Corruption Act is limited by the requirement that the act constituting the offence must also be an offence in the jurisdiction in which it was carried out.

III. Is there a concept of corporate criminal liability?

Yes. A body corporate may be found guilty of any of the above mentioned offences under the Corruption Act.

In addition, the Corruption Act provides for a corporate offence whereby a body corporate can be held liable if an offence is committed by any of the following individuals with the intention of obtaining or retaining either business for the body corporate, or an advantage in the conduct of business for the body corporate:

- a director, manager, secretary or other officer of the body corporate;
- a person purporting to act in that capacity;
- a shadow director within the meaning of the Companies Act 2014; or
- an employee, agent or subsidiary of the body corporate.

This is a strict liability offence and is not dependent on the prosecution or conviction of any of the above individuals. There is a potential defence available if the body corporate can show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence by the individual.

The Corruption Act also provides for a derivative offence for individuals whereby if it is proven that the corporate offence was committed with the consent or connivance, or was attributable to any willful neglect, of a director, manager, secretary or other officer or member of the body corporate or a person purporting to act in that capacity, then that person can be prosecuted and penalized as if they were guilty of the offence committed by the body corporate.

IV. What are the penalties for legal entities (if applicable) and natural persons?

The potential penalties applicable under the Corruption Act 2018 are as follows:

- On summary conviction (in the District Court): fine of up to €5,000; and/or forfeiture of the gift/benefit obtained or property of the equivalent value of the gift/benefit obtained in connection with the offence; term of imprisonment not to exceed 12 months.

- On conviction on indictment (in the Circuit Criminal Court): unlimited fines; and/or forfeiture of the gift/benefit obtained or property of the equivalent value of the gift/benefit obtained in connection with the offence; term of imprisonment of up to 5 years (for trading in influence) or 10 years (for all other offences). Depending on the circumstances, the Court may also order an Irish official to forfeit their office and prohibit them from holding office as a particular Irish official for up to 10 years.

V. Which local authorities are competent for corruption investigations?

An Garda Síochána is the body principally responsible for the investigation of bribery and corruption in Ireland and the specific division tasked with this role within the Gardaí is the Garda National Economic Crime Bureau (GNECB).

VI. Are there specific whistle-blower regulations?

There are no whistle-blower rules or regulations specifically relating to anti-corruption / bribery or offences under the Corruption Act.

However, the Protected Disclosures Act 2014 (the “2014 Act”) provides protection for whistleblowers who disclose relevant information about wrongdoing in a workplace (which may include conduct relating to corruption, for example).

‘Relevant Information’ is information that a worker reasonably believes tends to show one or more relevant wrongdoings and which came their attention in connection with their employment. Relevant wrongdoings include:

- the commission of a criminal offence;
- failure to comply with a legal obligation;
- the occurrence of a miscarriage of justice;
- endangerment of health or safety of an individual;
- misuse of public funds;
- mismanagement of a public body; and
- the concealment or destruction of information tending to show any of the foregoing.

VII. Are there voluntary disclosure / self-reporting programmes and procedures?

There are *mandatory* reporting obligations in respect of corrupt conduct in Ireland. It is an offence not to disclose information which a person knows or believes might be of material assistance in preventing the commission by any other person of an offence under the Corruption Act or in securing the apprehension, prosecution or conviction of any other person for a relevant offence unless there is a “reasonable excuse” not to do so (section 19 of the Criminal Justice Act 2011). This obligation does not however compel a person to disclose information which might incriminate themselves, as recently confirmed by the Irish Supreme Court in the case of *Sweeney v Ireland* [2019] IESC 39.

Apart from the mandatory requirements outlined above, there are no voluntary disclosure/self-reporting programmes in place in Ireland in respect of corruption / bribery currently. However, the Law Reform Commission has recommended the introduction of deferred prosecution agreements in Ireland the availability of which may depend upon voluntary self-reporting of the relevant conduct.

VIII. What are the consequences for assessment of guilt or admission of wrongdoing for future business, work, permits etc.?

The potential penalties which may be imposed on individuals and corporate bodies under the Corruption Act are set out in our response to Question IV above. In addition, unless the Probation Act is applied (whereby a conviction is not recorded against a person found guilty of wrongdoing), any criminal conviction will be on the record of the individual or body corporate convicted and will carry significant reputational implications, may impact upon an individual’s ability to secure visas for international travel and, in the case of public sector contracts, will impact upon the ability to tender for certain public contracts.

IX. What are the latest developments in anti-corruption in your jurisdiction?

In 2017, the GNECB established a dedicated Anti-Corruption Unit (the “**GNECB Anti-Corruption Unit**”) which is tasked with pro-actively investigating and preventing both foreign and domestic bribery and corruption. A dedicated confidential phone line for the reporting of bribery and corruption was established and training has been provided to regional units investigating bribery and corruption related offences. However, while the unit has carried out a number of the investigations to date, there have been no prosecutions arising from same. .

In 2018, the Department of Justice and Equality established a Review Group on anti-fraud and anti-corruption structures and procedures to ensure that all State bodies with a role in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together and identify any gaps or impediments in this regard. The Review Group’s findings are awaited.

More generally, in October 2018, the Irish Law Reform Commission issued a report on “Regulatory Powers and Corporate Offences” and made a number of recommendations including:



- the establishment of a properly resourced multi-disciplinary statutory Corporate Crime Agency with the power to investigate corporate offences and the establishment of a dedicated unit in the office of the DPP that would liaise closely with the Corporate Crime Agency;
- introduction of Deferred Prosecution Agreements under the control of the DPP to allow the suspension of a corporate prosecution subject to a company complying with strict conditions;
- if a corporate body can prove that it and its senior managers have exercised due diligence by setting up suitable risk management policies and procedures then this should serve as a full defence for most regulatory offences;
- if a corporate body can prove that in advance of taking a certain action, it obtained legal advice that the action complies with this law, such advice should be taken into account as a mitigating factor during sentencing.

In May 2019, the United Nations Convention against Corruption Implementation Review Group evaluated Ireland’s response to corruption and made a number of recommendations. In particular, the review called for: the establishment of an anti-corruption inter-agency steering committee to better coordinate corruption prevention efforts; and increased resourcing and staffing at the GNECB Anti-Corruption Unit.

In May 2019, it was announced by An Garda Síochána that a dedicated anti-corruption unit would be established to investigate allegations of corruption within An Garda Síochána and in particular to investigate drug-use allegations, the flow of information outside of the force and inappropriate association with criminals.

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