Ireland: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption laws and regulations that may occur in Ireland.

For a full list of jurisdictional Q&As visit [here]
1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

   The key Irish anti-bribery and corruption legislation is the Criminal Justice (Corruption Offences) Act 2018 (the ‘2018 Act’). Certain provisions in relation to gifts and hospitality are also set out in the Ethics in Public Office Act 1995 and Standards in Public Office Act 2001 (together the ‘Ethics Acts’).

2. **Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?**

   The Garda National Economic Crime Bureau is the primary body tasked with investigating bribery and corruption in Ireland. The body tasked with the prosecution of any such bribery or corruption offences is the Office of the Director of Public Prosecution.

   The Standards in Public Office Commission (the “Standards Commission”) is responsible for investigation of breaches of the Ethics Act.

3. **How is bribery defined?**

   The term “bribery” is not defined in the 2018 Act but the essence of the act of bribery is captured in the provisions of the Act and the offences set out in Part 2 of the 2018 Act, which includes but is not limited to, the following offences:

   **Active and passive corruption**

   It is an offence to directly or indirectly corruptly offer, give, agree to give, request, accept, obtain or agree to accept a gift, consideration or advantage as an inducement to, or reward for or otherwise on account of, doing an act in relation to one’s office, employment, position or business.

   ‘Corruptly’ is defined under the 2018 Act and includes 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.

   **Active and passing trading in influence**

   It is an offence 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 in relation to the office, employment, position or business of that official.

Similarly, it is an offence to directly or indirectly corruptly request, accept, obtain, or agree to accept for one’s self or for any other person, a gift, consideration or advantage on account of a person promising or asserting the ability to improperly influence an official to do an act in relation to their office, employment, position or business.

**Corruption in relation to office, employment, position or business**

An Irish official who directly or indirectly does 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, will be guilty of an offence.

It is also an offence for an Irish official to 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.

‘Irish official’ includes members of Parliament, members of the judiciary, officers, directors and employees of public bodies and persons employed by or acting for or on behalf of the public administration of the state.

**Giving a gift, consideration or advantage that may be used to facilitate an offence under the 2018 Act**

It is an offence to give a gift, consideration or advantage to another person where the person 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 2018 Act.

**Creating or using a false document**

It is an offence to directly or indirectly create or use a document that the person knows or believes to contain a statement which is false or misleading in a material particular, with the intention of inducing another person to do an act in relation to their office, employment, position or business to the prejudice of the last-mentioned person or another person.

**Intimidation**

It is an offence 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 their office, employment, position or business.
4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is ‘public official’ defined? Are there different definitions for bribery of a public official and bribery of a private person?

Certain provisions of the 2018 Act relate to all persons whether public or private whereas others relates to public officials only.

For example, section 5 of the Act applies to gifts, consideration or advantages offered or given 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. This would include government officials.

Section 6 of the Act applies where a person corruptly offers, gives or agrees to give, a gift, consideration or advantage in order to induce another person to exert an improper influence over an act of a foreign government official in relation to their office, employment, position or business.

Section 7 of the Act prohibits an Irish government official from doing any act in relation to his office or position for the purpose of corruptly obtaining a benefit.

‘Foreign Officials’ include members of the government of any other State, members of parliament of any other State, members of the European Parliament, members of the Court of Auditors of the EU, members of the European Commission, public prosecutors in another State, Judges of another State, jury members, and any other person employed on or behalf of the public administration of another State.

5. What are the civil consequences of bribery in your jurisdiction?

If an employee commits an offence under the 2018 Act this may give rise to a civil cause of action against the employee to recover damages in respect of any loss to the business.

A person who obtains a benefit by reason of a fiduciary relationship may also be required to account for the unauthorised profit made by him.

6. What are the criminal consequences of bribery in your jurisdiction?

On summary conviction, penalties range from a fine of up to €5000, a term of imprisonment of up to 12 months and/or forfeiture of property of the value of the gift or benefit obtained in connection with the offence.

On conviction on indictment, penalties range from an unlimited fine, a term of imprisonment of up to 10 years and/or forfeiture of property of the value of the gift or benefit obtained in connection with the offence. In certain circumstances, the Court may also order an Irish
official to forfeit their office and prohibit them from holding office for up to 10 years.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

Under the Ethics Acts, the Standards Commission has issued guidelines for office holders and public servants (the "Guidelines"). The Guidelines provide that all office holders and public servants are expected to adhere to the fundamental principle that an offer of gifts, hospitality or services should not be accepted where it would or might appear to, place the office holder or public servant under an obligation.

The Standards Commission has also published a Code of Conduct for Office Holders and a Civil Service Code of Standards and Behaviour (the "Codes of Conduct"), which set out in detail the standards of integrity and conduct expected of office holders and public servants in the performance of their official duties, and include specific additional guidance on accepting gifts and hospitality.

Failure to abide by the Guidelines and Codes of Conduct set out by the Standards Commission may result in Irish officials and office holders committing an offence.

In relation to hospitality and travel, the provision of local and non-local transportation is generally acceptable assuming there is no corrupt intent and no desire to influence a public official in the exercise of his/her official duties, however, office holders and such designated public servants are required to make appropriate disclosures in relation to gifts and related property/services.

Generally, small token gifts such as calendars, diaries or pens of small value are acceptable provided there is no intent to influence the government official. When the aggregate value of gifts during a relevant annual period exceeds the threshold of €650 each individual gift should be declared, even when the individual gift value does not exceed €650. In relation to surrendering gifts, the Standards Commission is of the view that the Ethics Acts do not require the surrender of gifts from one source where they are presented on separate occasions during a relevant annual period and while their individual value does not exceed €650, their aggregate value does. Also, where a number of gifts are presented on one occasion, these should be treated separately for the purposes of surrender (where not intrinsically linked), so the €650 threshold applies to each of them.

Common examples of corporate hospitality such as meals, match tickets and other entertainment also fall within the ordinary meaning of ‘gift, consideration or advantage’, language which is used in the 2018 Act. However, such gifts or entertainment do not necessarily fall within the scope of the 2018 Act. In order for the provision of corporate hospitality to amount to an offence under the 2018 Act, it must satisfy all of the elements of
the offences under the Act. The purpose of the Act is not to criminalise corporate hospitality that is offered simply to maintain good business relations. For example, in order for the offence of active corruption to apply, the hospitality must be offered corruptly (ie, with an improper purpose personally or by influencing another person) and it must be offered as an inducement to or reward for a person doing an act in relation to their employment, position or business.

8. Are political contributions regulated?

Political contributions in Ireland are regulated by to the Electoral Act, 1997, (as amended) (“the Electoral Act”).

Certain donations are prohibited pursuant to the Electoral Act. For example, a political party may not accept an anonymous donation exceeding €100 in value. Similarly, a political party may not accept a cash donation exceeding €200 in value and in such circumstances must return the donation, or the part of it exceeding the limited, to the donor. A political party also may not accept a donation exceeding €200 in value from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Standards Commission and a statement is made on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor. The maximum value of donations which a political party may accept from the same donor in the same calendar year, either directly or indirectly through an intermediary, is €2,500. Where a donor makes more than one donation to a political party in a particular year, the values of the donations must be aggregated for the purpose of observing the maximum limit. Restrictions also apply to donations made by persons and organisations residing outside of Ireland.

Should a person fail to comply with the guidelines issued by the Standards Commission in relation to the treatment of political donations, they may be guilty of an offence.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

There is no distinction in Irish law between facilitation payments and other types of corrupt payments. Therefore, should a payment fall within the scope of the 2018 Act, it may constitute an offence.

10. Are there any defences available?

Pursuant to Section 18(2) of the 2018 Act, it shall be a defence for a company against which proceedings are brought to prove that it took ‘all reasonable steps and exercised all due diligence’ to avoid the commission of the offence.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for
The 2018 Act applies both to individuals and corporate bodies resident in Ireland.

Under Section 18(1) of the Act, a body corporate may be guilty of an offence if an offence under the Act 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.

The Act also has an extraterritorial element.

A person or corporate body can be prosecuted for an offence under the Act if any of the acts alleged to constitute the offence are committed in Ireland (or on an Irish ship or an Irish registered aircraft), even if the other acts constituting the offence were committed outside
Ireland. The Act also provides that, in certain circumstances, where a person does an act in a place outside Ireland that, if done in Ireland, would, constitute an offence under the Act, they shall be guilty of an offence.

13. **Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?**

The government has not yet published guidance on compliance with anti-corruption and bribery legislation in Ireland. However, the government has recently appointed a review group chaired by the former Director of Public Prosecutions, James Hamilton, to carry out a review of anti-fraud and anti-corruption structures and procedures. The Terms of Reference of the Review note that it is aimed at assessing the extent to which the various State bodies involved in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together, and identifying any gaps or impediments in this regard. The Review Group is due to report its findings and recommendations to the Minister for Justice and Equality by summer 2019. It is hoped that as part of that Review, recommendations will be made in relation to, among other things, the publishing of guidance in relation to compliance with anti-corruption legislation.

14. **Does the law provide protection to whistle-blowers?**

The Protected Disclosures Act 2014 provides protection for a whistle-blower who is a worker when a disclosure of relevant information is made.

The term ‘worker’ is broadly defined and includes employees, contractors, self-employed individuals, agency workers and people on work experience.

‘Relevant information’ is information which a worker reasonably believes tends to show one or more relevant wrongdoings and which came to 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.

In order for the protections under the 2014 Act to apply, the disclosure must be made through a specified disclosure channel which includes, depending on the circumstances, to a
The 2014 Act requires that the recipient of the disclosure protect the whistle-blower’s identity insofar as possible. A whistle-blower is also protected from penalisation or dismissal by their employer for making a protected disclosure. Further, a whistle-blower will be immune from criminal liability in respect of any offence prohibiting or restricting the disclosure of information if, at the time of making the disclosure, they reasonably believed that it was a protected disclosure under the 2014 Act.

15. **How common are government authority investigations into allegations of bribery?**

To date, investigations into allegations of bribery or corruption in Ireland have been uncommon. This trend appears however to be slowly changing. The Garda National Economic Crime Bureau now has a team dedicated to the investigation of serious and complex economic crimes to include the investigation of all cases of bribery and corruption. One would also anticipate that following the Government’s Review of anti-fraud anti-corruption measures as referred to above, there will be a renewed focus on the enforcement and prosecution of allegations of bribery and corruption.

16. **What are the recent trends in investigations and enforcement in your jurisdiction?**

Many Irish regulators (for example, the Central Bank of Ireland, ODCE, Charities Regulator) are actively investigating and taking enforcement action in relation to alleged legislative breaches pertaining to their specific industry. This has yet to be mirrored in the anti-bribery and anti-corruption space. However, the 2018 Act is part of a suite of measures published by the Irish government in November 2017 aimed at enhancing corporate governance, increasing transparency and strengthening Ireland’s response to white collar crime. Certain of the elements of the government’s package on the proposed reform on white collar crime, along with the introduction of the 2018 Act, include:

- Establishing an independent company law, compliance and enforcement agency to be known as the Corporate Enforcement Authority, replacing the current Office of the Director of Corporate Enforcement (ODCE). The General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018 was published on 4 December 2018 and under the proposed legislation, the ODCE will take the form of a Commission, as opposed to its current structure as an office within the Department of Business, Enterprise and Innovation, with the intention that this will provide the organisation with more autonomy and flexibility in the investigation and prosecution of complex breaches of company law;
- Piloting a Joint Agency Task Force within the Irish police force to tackle white collar crime;
- Enacting the Criminal Procedure Bill. When enacted, it is envisaged that this legislation will streamline criminal procedures to enhance the efficiency of criminal trials.

In addition, in October 2018, the Law Reform Commission issued a report on Regulatory
Powers and Corporate Offences. Among the recommendations were:

- that a properly resourced statutory Corporate Crime Agency be established;
- that economic regulators have the power to impose significant financial sanctions and to make regulatory enforcement agreements, to include redress schemes; and
- a proposal for reform of fraud offences to address egregiously reckless risk taking.

While historically there has been little in the way of investigating or enforcing instances of bribery and corruption in Ireland, given the increased focus among regulators in relation to investigations and enforcement generally in the jurisdiction, one anticipates that this is likely to change in the near term.

17. **Is there a process of judicial review for challenging government authority action and decisions?**

Yes, decisions and actions of government authorities can be challenged by way of judicial proceedings in the Irish High Court. In such proceedings, the High Court will assess inter alia whether the authority has acted outside its remit, whether fair procedures have been adhered to by the relevant authority and whether the decision maker has complied with all legal requirements governing the decision and its making.

18. **Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

The General Scheme of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2019 was approved by the Irish government on 3 January 2019. When enacted, this will transpose many of the provisions of the Fifth EU Money Laundering Directive, which aims to strengthen EU money laundering and terrorist financing laws.

19. **To which international anti-corruption conventions is your country party?**

Ireland is a party to the following international anti-corruption conventions:

- the EU Convention on the Protection of the European Communities Financial Interests (and Protocols);
- the OECD Convention on Combatting Bribery of Foreign Officials in International Business Transactions;
- the Council of Europe Criminal Law Convention on Corruption;
- the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union;
- the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption;
- the UN Convention against Transnational Organised Crime; and
- the UN Convention against Corruption.
20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

There are a number of types of legal professional privilege (LPP) recognised in Ireland.

Legal advice privilege applies to documents, the dominant purpose of which is the giving or receiving of legal advice.

Litigation privilege applies to confidential documents created with the dominant purpose of preparing for litigation that is pending or threatened or for the purpose of prosecuting or defending litigation.

Common interest privilege may also apply in the context of internal investigations where a document which would have been subject to LPP is given to a third party who may be said to have a common interest in the legal advice, litigation or regulatory process.

Increasingly, regulators are also recognising the concept of ‘regulatory privilege’ which covers documents created in apprehension or contemplation of a regulatory investigation, the dominant purpose of which is for the purpose of responding to or defending the regulatory investigation or prosecution.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction’s approach to anti-bribery and corruption compares on an international scale?

As mentioned above, the government has recently published a suite of measures in the White Collar Crime space with a view to increasing transparency and strengthening Ireland’s response to white collar crime. Among these measures was a commitment to review Ireland’s anti-corruption and anti-fraud structures and procedures in criminal law enforcement. In 2018, a review group was set up to carry out such review. The government therefore appears to be taking active measures in terms of the approach of various State bodies involved in the prevention, detection, investigation and prosecution of fraud and corruption.

Notwithstanding this, Ireland remains somewhat behind its international counterparts in terms of investigating and prosecuting bribery and corruption. In the UK, there have been multiple prosecutions under the Bribery Act, 2010. The UK government have also issued guidance regarding the Bribery Act which provides key insights as to how the UK Ministry of Justice intend the Bribery Act to be implemented. It is hoped that following the aforementioned review, a similar approach will be followed in Ireland.

22. Generally how serious are organisations in your country about preventing bribery and corruption?

Since the introduction of the 2018 Act there has been a renewed focus among Irish
organisations in relation to tackling bribery and corruption and organisations are keen to ensure that they have sufficient measures in place in order to detect and prevent instances of bribery and corruption. This can present challenges for organisations but the key focus for organisations has been to ensure that they have clear unambiguous policies in place, that training in relation to such policies has been provided, and that all employees are aware of their obligations under the policies and their involvement in the detection, prevention and reporting of instances of bribery and corruption.

23. **What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?**

One of the key challenges facing enforcement agencies/regulators relates to the resourcing and expertise available to them. An absence or limitation of resources means that many State regulators face a consequent lack of sufficient experience or manpower to allow the regulator comprehensively investigate alleged offences. In the bribery and corruption space, this is perhaps best evidenced from the lack of prosecutions historically in the area.

Certain regulators have outsourced functions in order to avail of relevant expertise and it may be that this trend must continue in the near terms whilst regulators and other State bodies build up their internal expertise and resources.

24. **What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**

As the Government have not published any guidance in relation to the 2018 Act, it is difficult for businesses to determine with any certainty the approach that the government will take to the investigation and prosecution of cases of bribery and corruption. There is therefore a level of uncertainty and it is challenging for businesses to adequately prepare for what is somewhat unknown territory. However, businesses must nevertheless be aware of their obligations under the Act and take all appropriate measures in order to minimise any risk of an instance of bribery or corruption occurring within their organisation.

25. **How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?**

The 2018 Act is currently in its infancy and, to date, there have been no prosecutions under the Act. Until this has been tested, there will remain a level of uncertainty as to the lengths the authorities will go to in terms of enforcing suspected cases of bribery and corruption. In the meantime, in order to review the effectiveness of the legislative framework in place, there may be merit in considering the commissioning of a committee tasked with a single purpose of reviewing the effectiveness of the 2018 Act, somewhat akin to the Bribery Act Committee appointed by the House of Lords in the UK for the purpose of reviewing the effectiveness of the Bribery Act, 2010.
In that instance, the Committee pinpointed certain areas of improvement to include recommending that the government improve their advice to SME’s about how best to export their products and services while remaining compliant with the Bribery Act, and noting that witnesses reported a lack of cooperation between the Crown Prosecution Service (CPS), Serious Fraud Office (SFO), the Police, National Crime Agency, HMRC and others which the Committee recommended be remedied. The Committee also recommended that the CPS and SFO publish plans outlining how they would speed up bribery investigations and improve the level of communication of those placed under investigation for bribery.

In order for a Committee such as that established in the UK to add value in an Irish context, it would be important that there has been some attempt by the authorities to enforce Irish legislation in a meaningful way. This may therefore be a consideration for a number of years down the line but it is perhaps something to keep under review.