

# Anti-Corruption Regulation

in 44 jurisdictions worldwide

# 2014

Contributing editor: Homer E Moyer Jr



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**Anti-Corruption Regulation 2014**

**Contributing editor:**  
**Homer E Moyer Jr**  
**Miller & Chevalier Chartered**

*Getting the Deal Through* is delighted to publish the eighth edition of *Anti-Corruption Regulation*, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 44 jurisdictions featured. New jurisdictions this year include Algeria, Bermuda, Cameroon, Denmark, Ecuador, Malaysia, Peru and Portugal. There is also a new chapter on asset recovery, in addition to a global overview and the perspectives of Transparency International and the OECD.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Homer E Moyer Jr of Miller & Chevalier Chartered for his continued assistance with this volume.

**Getting the Deal Through**

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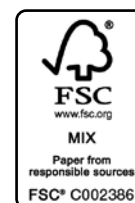
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# Ireland

## Carina Lawlor and Bríd Munnelly

Matheson

### 1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Ireland has signed and ratified the following international anti-corruption conventions:

- Council of Europe Criminal Law Convention on Corruption – entered into force on 1 February 2004;
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption – entered into force on 1 November 2005;
- UN Convention against Corruption – entered into force on 9 December 2011;
- OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions – entered into force on 21 November 2003;
- Convention of the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union – entered into force on 28 September 2005;
- EU Convention on the Protection of the European Communities Financial Interests (and Protocols) – entered into force on 17 October 2002; and
- UN Convention against Transnational Organized Crime – entered into force on 17 July 2010.

Ireland signed the Council of Europe Civil Law Convention on Corruption on 4 November 1999 but has not yet ratified it.

### 2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Anti-corruption legislation in Ireland generally prohibits bribery of both public officials and private individuals committed in Ireland and, in certain circumstances (ie, where the donor has a connection with Ireland), committed abroad. In contrast with other jurisdictions, the offences provided for under Irish legislation do not generally distinguish between the bribery of persons working in a public or private body. The only exception is the presumption of corruption, detailed below, which only applies to public officials.

Irish laws prohibiting bribery are a combination of common law and statutory law dating back to the late 19th century and are spread across a number of pieces of legislation as set out below. Draft terms of legislation were published in June 2012, which, when enacted, will replace the principal pieces of anti-corruption legislation with one consolidated piece of legislation.

#### Common law

At common law, the offences of bribery and attempted bribery are punishable by imprisonment or a fine, or both. It is an offence to offer an undue reward to, or receive an undue reward from, a public

official in order to influence that person in the exercise of his or her duties in that office contrary to the rules of honesty and integrity.

The common law bribery and attempted bribery offences have not been judicially considered in recent times and prosecuting authorities mainly rely on the statutory law offences.

#### Statutory law

The three principal sources of bribery law in Ireland are:

- the Public Bodies Corrupt Practices Act 1889, as amended by the Prevention of Corruption Acts 1916 and the Ethics in Public Office Act 1995 (the Public Bodies Acts);
- the Prevention of Corruption Act 1906, as amended by the Prevention of Corruption (Amendment) Act 2001 and the Prevention of Corruption (Amendment) Act 2010 (the Prevention of Corruption Acts); and
- the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001 (the Ethics Act).

There is a degree of overlap between the offences under the Public Bodies Acts and the Prevention of Corruption Acts.

#### The Public Bodies Acts

The principal offences under the Public Bodies Acts deal with corruption in Irish public office and apply in situations where a corrupt payment is being made to, or for the benefit of, an office-holder, their special adviser, a director, or an employee of an Irish public body. In these cases, it is an offence for a person to:

- corruptly,
- give, promise or offer, solicit, receive or agree to receive,
- for himself, or for any other person,
- any gift, fee, loan, reward or advantage whatsoever as an inducement to, or reward for,
- one of the specified public officials above, doing or refraining from doing,
- anything in which the public body is concerned.

The term ‘corruptly’ is not defined in the Public Bodies Acts.

#### The Prevention of Corruption Acts

The Prevention of Corruption Acts prohibit three offences, the first of which is corruptly accepting a gift. It is an offence for an agent or any other person to:

- corruptly,
- accept, agree to accept, or agree to obtain,
- a gift, consideration or advantage,
- for himself or any other person,
- as an inducement, reward or on account of the agent doing any act, or making any omission,
- in relation to the agent’s office or position, or his principal’s affairs or business.

The second offence is corruptly giving a gift. In this case, it is an offence for a person to:

- corruptly,
- give, agree to give or offer,
- a gift, consideration or advantage,
- to an agent or any other 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 office or his principal's affairs or business.

The third offence is making a false statement. A person will be guilty of an offence if they knowingly give to any agent, or an agent knowingly uses with intent to deceive his or her principal, any receipt, account or other document which contains any statement which is false or erroneous or defective in any way, and which to that person's knowledge is intended to mislead the principal.

A definition of 'corruptly' was introduced in 2011 as '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 any other means'. The phrase 'improper purpose' is not defined.

The term 'agent' is broader than the common-law understanding of agent and includes domestic and foreign nationals employed by or acting on behalf of both private and public bodies, as follows:

- (a) an employee or person acting for another;
- (b) an office-holder or director in a public body or any other person employed by or acting on behalf of the public administration of the Irish state;
- (c) a member of the Irish parliament or an Irish elected member of the European Parliament;
- (d) the Attorney General, the Comptroller and Auditor General, and the Director of Public Prosecutions;
- (e) a judge of the Irish courts;
- (f) a member of government, or regional or national parliament of any other state;
- (g) any member of the European Parliament, the Court of Auditors of the European Communities, or the European Commission;
- (h) a public prosecutor or judge in any other state;
- (i) a judge of any court established under an international agreement to which Ireland is a party;
- (j) a member of an international organisation to which Ireland is a party;
- (k) any person employed by or acting on behalf of the public administration of any state; or
- (l) any member or person employed by an international organisation to which Ireland is not a party.

The Prevention of Corruption Acts also include a discrete offence relating to corruption in office which prohibits a public official carrying out a particular act with a view to later receiving a gift, consideration or advantage for themselves or someone else. 'Public official' in this context includes only the domestic public officials set out at (b) to (e) in the definition of 'agent' above and so does not apply to foreign public officials.

As stated above, draft legislation has been published which proposes to amend the Prevention of Corruption Acts. In its current draft, the new legislation will retain the three offences set out above but will add an additional offence of corruptly threatening harm to a person with the intention of influencing any person to do or omit to do something in relation to his office or employment. This is considered in more detail in 'Update and trends'.

#### The Ethics Act

The Ethics Act places obligations on Irish public office-holders and other senior members of the Irish public service, to report and surrender gifts and payments above €650. The Ethics Act aims to

combat corruption in office by requiring public declarations of financial interests, as well as prohibiting the receipt of gifts, whether or not they are given by the donor with the intention of procuring a certain result or course of action.

#### Other legislation

The Criminal Justice (Theft and Fraud Offences) Act 2001 (the Theft and Fraud Act) enshrines in Irish law the offences of active and passive corruption as set out in the First Protocol to the EU Convention of the Protection of European Communities Financial Interests. While in many ways similar to the offences outlined above, these apply solely to active and passive corruption of officials of the European Communities or member states that damages the EU's financial interests.

#### Presumptions of corruption

Various presumptions of corruption arise under the Public Bodies Acts, the Prevention of Corruption Acts and the National Asset Management Agency Act 2009. These include where:

- a payment was made by a person, or agent of a person, who is seeking to obtain a contract from a government minister or a public body;
- an undisclosed political donation above a certain threshold is made to certain specified persons and the donor had an interest in the donee carrying out or refraining from doing any act related to their office or position;
- a public official is suspected of committing an offence under the Prevention of Corruption Acts and the person who gave the gift or advantage had an interest in the public official granting or refusing a licence or authorisation, making a decision relating to the acquisition or sale of property, or exercising any function under the Planning and Development Act 2000; or
- a gift, consideration or advantage is conferred upon a person performing functions for the National Asset Management Agency (NAMA) by a person whose debts have been assumed by NAMA.

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#### Foreign bribery

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##### 3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Bribery of a foreign public official arises in the context of the Prevention of Corruption Acts and the Theft and Fraud Act, as described above.

Bribery occurring outside of Ireland will only be prosecuted in Ireland if it is carried out by Irish persons or entities or takes place at least partially in Ireland. If an Irish person does something outside Ireland which, if done within Ireland, would constitute a corruption offence, that person is liable as if the offence had been committed in Ireland. This provision is not reliant on an equivalent offence existing under the laws of the foreign jurisdiction and only applies to certain specified Irish persons including:

- Irish citizens;
- persons who are ordinarily resident in Ireland;
- companies registered under the Irish Companies Acts;
- any other body corporate established under Irish law; or
- certain defined public officials.

In addition, a person may be tried in Ireland for an offence under either the Public Bodies Acts or the Prevention of Corruption Acts if any of the acts constituting the offence were partly committed in the state and partly committed outside Ireland.

### Theft and Fraud Act

The Theft and Fraud Act also contains provision for extraterritorial effect where:

- the offender is an Irish citizen or an official working for an EU institution that has its headquarters in Ireland; or
- active corruption is committed against an official who is an Irish citizen or directed against an Irish citizen who is a member of the European Commission or Parliament, the Court of Justice of the European Communities or the Court of Auditors of the European Communities.

#### 4 Definition of a foreign public official

How does your law define a foreign public official?

### Prevention of Corruption Acts

The definition of foreign public official is contained within the definition of 'agent' contained in the Prevention of Corruption Acts, as set out in question 2, specifically those at (f) to (l). In particular, (k) refers to any other person employed by or acting on behalf of the public administration of any other state.

### Theft and Fraud Act

The definition of 'official' under the Theft and Fraud Act is much broader than in the Prevention of Corruption Acts and captures both 'Community officials', to include officials, contracted employees and secondees of the European Communities, and 'national officials', which is defined by reference to the definition of national official in each individual member state of the European Communities. However, the elements of the corruption offences under the Theft and Fraud Act are narrower than those in the Prevention of Corruption Acts, as set out in question 2.

### Other legislation

Neither the Public Bodies Acts, nor the Ethics Act, apply in respect of foreign public officials, as they are directed at the bribery of domestic public officials.

#### 5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

The Prevention of Corruption Acts and the Theft and Fraud Act do not take the value or type of gift, consideration or advantage into account when determining if an offence has been committed. Such gifts will fall within the scope of the legislation if provided 'corruptly'.

#### 6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

A 'facilitation payment' is generally understood to be a payment made to expedite or to secure the performance of a routine governmental action. There is no distinction drawn in Irish law between facilitation payments and other types of corrupt payments. As such, a facilitation payment will be illegal if it fulfils the elements of the relevant offences.

#### 7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

The offences under the Public Bodies Act, Prevention of Corruption Acts and the Theft and Fraud Act clearly envisage the payment, or receipt, of corrupt payments through intermediaries. It is therefore immaterial whether the payment is made to an intermediary provided the payment ultimately made to a foreign or domestic public official fulfils the other elements of the relevant corruption offence.

### 8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

#### Statutory law

The Interpretation Act 2005 provides that in all Irish legislation, references to 'persons' include references to companies and corporate entities.

In addition, under the Prevention of Corruption Acts, an officer of a company that commits an offence under that legislation will also be guilty of an offence, if the offence is proved to have been committed with the consent, connivance or approval of the officer, or is attributable to the neglect of the company's officers. However, to date, there are no recorded prosecutions of companies or their officers under Irish anti-corruption legislation.

The draft scheme of the proposed Corruption Bill contains a number of measures relating to the liability of companies for the bribery of an official and this is discussed further in 'Update and trends'.

#### Common law

A company can itself be found liable under common law for the criminal acts carried out by its officers and employees by way of vicarious liability. Vicarious liability deems the company liable for the acts of its employees but those acts remain the acts of the employees and not of the company. The company can also be directly liable where the state of mind of an identifiable person in the company can be attributed to the company, such that it is considered that the state of mind of that person is the state of mind of the company.

### 9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

The Irish legislation set out in question 2 above provides for both civil and criminal enforcement of Ireland's bribery laws. There have been no cases against Irish nationals or companies for bribing foreign public officials. However, the OECD has noted that three allegations of bribery of foreign officials are at a pre-investigation stage and one allegation is currently under investigation by the Irish authorities.

### 10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The following bodies can investigate alleged offences under Irish bribery law, relating to both foreign and domestic public officials:

- Garda Bureau of Fraud Investigation (this is an office of the Irish police force);
- The Revenue Commissioners;
- The Criminal Assets Bureau; and
- The Office of the Director of Corporate Enforcement.

The prosecution of offences is carried out by the Director of Public Prosecutions (DPP).

The Standards in Public Office Commission (the SIPO Commission) is responsible for the investigation of breaches of the Ethics Act. Following an investigation, if it is of the opinion that an office-holder or public servant the subject of the investigation has committed an offence, the SIPO Commission may make a report to the DPP.

### 11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

There are no specific provisions to allow companies to disclose violations of Irish bribery law in exchange for lesser penalties. Should

a company cooperate with an investigation, such cooperation may be taken into account during sentencing.

## 12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

While cooperation with investigating authorities can be taken into account as a mitigating factor by a court during sentencing, plea bargaining with prosecutors or the court is not permitted and would be constitutionally suspect. This is because, under the Irish Constitution, justice must be administered in public and the courts have exclusive jurisdiction over sentencing matters.

The DPP has limited discretion under the Criminal Procedure Act 1967 to direct that a matter be disposed of summarily in the District Court (the court of most limited jurisdiction) where the accused pleads guilty. This would result in a lower penalty being imposed.

## 13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

In summary, there has been no enforcement of Irish foreign bribery rules as yet. See question 9.

## 14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Irish bribery law does not explicitly provide for the prosecution of foreign companies for bribery outside the Irish state. Instead, the Prevention of Corruption Acts are based on the concept of territoriality – acts committed outside Ireland can only be prosecuted, if certain connections to Ireland can be shown, such as the offence having involved the bribery of an Irish official, or the person carrying out the bribe being an Irish citizen or company.

## 15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

### Criminal sanctions

#### Prevention of Corruption Acts

A person guilty of either a corruption offence or the discrete offence of corruption in office, under the Prevention of Corruption Acts, is liable on summary conviction to a fine not exceeding €4,000 and/or imprisonment for a term not exceeding 12 months. A person convicted on indictment is liable to an unlimited fine or imprisonment for a term not exceeding 10 years or both.

An employer summarily convicted of an offence under the whistleblower protection in the Prevention of Corruption Acts can be fined up to €5,000 and imprisoned for up to 12 months. Upon conviction on indictment, an employer can be fined up to €250,000 and imprisoned for up to three years.

#### Theft and Fraud Act

Any person or official who is convicted on indictment of committing either active or passive corruption under the Theft and Fraud Acts can be subject to an unlimited fine or imprisonment for a term of up to five years, or both.

An auditor who fails to report an indication of corruption under the Theft and Fraud Act to the Irish police will be guilty of an offence and will be liable on summary conviction to a fine of €2,500 or imprisonment to a term not exceeding 12 months.

### Seizure of proceeds of crime

The DPP can obtain an order of forfeiture of a gift or consideration under the Criminal Justice Act 1994, where a judge of the Circuit Court is satisfied that the gift or consideration is corruptly given or received. An order for forfeiture is not dependent upon criminal proceedings being brought but it must be shown that, on the balance of probabilities, the gift or consideration has been corruptly received.

Under the Prevention of Corruption Acts, a member of the Irish police may seize any gift or consideration which they suspect to be a gift or consideration within the meaning of the Prevention of Corruption Acts. The gift or consideration can only be detained for 48 hours unless a Circuit Court order is obtained that extended detention is necessary to properly investigate a corruption offence. A gift or consideration that is so seized may be ultimately forfeited if a Circuit Court judge is satisfied that, on the balance of probabilities, the gift or consideration was given in the context of a corruption offence.

The Proceeds of Crime Acts 1996–2005 also contain wide-ranging powers for the Criminal Assets Bureau to seize the proceeds of crime. ‘Proceeds of crime’ are defined as any property obtained or received by or as a result of, or in connection with, the commission of an offence, and include the proceeds of corruption.

### Civil

An employer may have a civil cause of action to recover damages from an employee who has been bribed and has caused loss to the business. A person who obtains a benefit by reason of a fiduciary relationship (which can include employer–employee and principal–agent relationships) may also be required to account on trust for the unauthorised profit made by him.

The Department of Enterprise, Jobs and Innovation has issued guidance that a company that violates Irish bribery law may be prevented from bidding on any public contract in the European Union.

Where a breach of Irish bribery law is committed by a company in connection with a project funded by the World Bank and other international financial institutions, such companies may be debarred from bidding on contracts funded by the World Bank, International Monetary Fund and other international financial institutions, and publicly named.

## 16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

See question 9.

## Financial record keeping

### 17 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

#### Accurate corporate books and records

Irish-incorporated companies are required to keep proper books of account under sections 202 to 204 of the Companies Act 1990. The books must:

- correctly record and explain the transactions of the company;
- at any time enable the financial position of the company to be determined with reasonable accuracy;
- enable the directors to ensure that any annual accounts of the company comply with Irish company law requirements and international accounting standards; and
- enable the proper auditing of the company’s annual accounts.

A company, its directors, or both can be held criminally liable for a failure to take all reasonable steps to secure compliance with these

requirements or is the cause, by wilful act, of any default by the company of its obligations.

Section 243 of the Companies Act 1990 sets out that it is an offence for an officer of a company to destroy, mutilate or falsify any book or document affecting or relating to the property or affairs of the company.

Section 10 of the Theft and Fraud Act sets out the offence of false accounting whereby a person who, with the intention of making a gain for themselves or another or of causing a loss to another, provides false information in relation to a document made or required for any accounting purpose, is guilty of an offence.

#### Effective internal company controls

The Companies Act 1990 and the Companies (Auditing and Accounting) Act 2003 contain a number of provisions relating to internal company controls, but the majority are not currently in force. These relate to establishment of audit committees, confirmation of compliance with obligations under company and tax law, as well as any other legislation that may 'materially affect the company's financial statements'. The Irish government published a new Companies Bill in December 2012 to consolidate all of the existing Irish companies legislation. Included in its provisions are proposals to require audit committees for 'large companies'.

The Irish Stock Exchange has determined that companies on the exchange must comply with the UK Financial Reporting Council's Combined Code on Corporate Governance or explain non-compliance in their annual report.

In addition, in respect of credit institutions and insurance undertakings, the 2010 Central Bank Corporate Governance Code for Credit Institutions and Insurance Undertakings sets out the minimum statutory requirements for the governance of such institutions.

#### Periodic financial statements

The annual accounts of a company must be provided to its members at least 21 days before the company's annual general meeting. These consist broadly of a profit and loss account, a balance sheet, a cash-flow statement, notes to financial statements and a directors' report.

#### External auditing

Section 160(1) of the Companies Act 1963 requires that Irish companies appoint an external auditor, whose duty it is to examine the company's accounts and prepare a report that accurately reflects the company's financial position. Section 193 of the Companies Act 1990 gives auditors the right to seek access to company documents and to compel information and explanations from company officers and employees.

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#### 18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

#### Reporting obligations

The Criminal Justice Act 2011 gives the Irish police increased powers to compel a person or company by court order to produce documents or evidence which relates to corruption offences.

The Criminal Justice Act 2011 also introduced a positive obligation to report to the Irish police information which a person or company knows or believes might be of material assistance in preventing the commission of a corruption offence or securing the arrest, prosecution or conviction of another person for a corruption offence.

Under the Theft and Fraud Act, auditors are required to report to the Irish police any indications of bribery of an EU public official. In addition, the Companies Act 1990 contain a requirement that auditors report to the Office of the Director of Corporate Enforcement any instances of suspected indictable offences under the Companies Acts, committed by a company, its officers or agents.

#### Whistleblower protection

A provision for whistleblower protection was inserted into the Prevention of Corruption Acts in 2010. This protects individuals who report suspected violations of the Prevention of Corruption Acts and prohibits an employer from penalising the reporting employee.

Additional whistleblower protection was introduced in the Criminal Justice Act 2011 along much the same terms as those inserted in 2010 to the Prevention of Corruption Acts, and applies to those offences covered by the Prevention of Corruption Acts.

The Irish Government has published the Protected Disclosures in the Public Interests Bill 2013 which, when enacted, will provide wider whistleblower protection than that currently afforded.

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#### 19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Legislation related to financial record keeping is not used to prosecute domestic or foreign bribery. However, in situations where offences under the financial record keeping legislation have occurred, bribery may also have taken place and such offences could be prosecuted.

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#### 20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There are no accounting rules associated with the payment of bribes. Instead, where a bribe has been given or received, an offence may have occurred under sections 202 to 204 of the Companies Act 1990, as outlined in questions 17 and 19.

A person found guilty of contravening sections 202 to 204 or section 243 of the Companies Act 1990 is liable on summary conviction to a fine not exceeding €2,500 and/or imprisonment to a term not exceeding 12 months (six months in the case of sections 203 to 204). Conviction on indictment can lead to a fine of up to €22,220.42 or imprisonment for up to five years, or both. The draft Companies Bill proposes to increase these fines to up to €5,000 or imprisonment of a term not exceeding 12 months for summary conviction, or both, and a fine of up to €500,000 or imprisonment to a term not exceeding 10 years for a conviction on indictment, or both.

A person found guilty of contravening section 10 of the Theft and Fraud Act is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term up to 12 months, or both, and, on conviction on indictment, a fine or imprisonment for up to 10 years, or both.

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#### 21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Yes. Section 83A of the Taxes Consolidation Act 1997, which deals with expenditure involving crime, provides that no deduction shall be made in computing the taxable income of a trade for any expenditure which constitutes a criminal offence. The section also prohibits an expense deduction for any payment made outside the state where the making of a corresponding payment in the state would constitute a criminal offence.

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#### Domestic bribery

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#### 22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

Please see question 2. The Public Bodies Acts, the Prevention of Corruption Acts, the Theft and Fraud Act and the Ethics Act all apply to the bribing of a domestic public official.



### Update and trends

#### Proposed corruption legislation

On 20 June 2012, the Minister for Justice published the draft scheme of the much-anticipated Corruption Bill. The draft scheme proposes to repeal the numerous pieces of anti-corruption legislation in Ireland and replace them with one consolidated piece of legislation. Many of the existing provisions remain in the draft scheme but have been clarified and strengthened. It is not clear when the Corruption Bill is likely to be put before the Irish parliament, although we expect that it will be during the course of 2014–2015. The main features of the draft scheme are as follows:

- An expanded definition of ‘corruption’ to include acting in breach of duty, acting without due impartiality, acting without lawful authority, acting in breach of a relevant code, acting in pursuit of undue benefit and acting in a deceitful, dishonest or misleading manner. Should the bill be drafted in the proposed terms, the scope of the offence of bribery would be expanded far beyond that currently covered by Irish or UK corruption legislation and beyond the broad definition of ‘corrupt payment’ used by the Mahon Tribunal.
- A new presumption of corruption in respect of corrupt enrichment by an Irish public official. Where an Irish public official maintains a standard of living above that commensurate with his stated

interests, it shall be presumed that this enrichment is the result of corruption.

- Companies will also be liable for corruption offences of their employees, agents, subsidiaries, officers, secretaries, managers and directors, where there is an intention by those persons to obtain or retain business for the company. This will make it easier for companies to be prosecuted for corruption.
- It will be a defence for a company to be able to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

At the EU level there have been a number of initiatives including a draft directive proposed by the European Commission providing for disclosure by companies with over 500 employees of a description of their anti-corruption policies, the results of the policy and the applicable risks. In addition, the European Federation of Pharmaceutical Industries and Associations adopted a code requiring public disclosure of transfers of value to health-care organisations and professionals. This was adopted in Ireland as part of the Irish Pharmaceutical Healthcare Association’s ‘Code of Marketing Practice for the Pharmaceutical Industry’.

### 23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. See question 2.

### 24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

#### Prevention of Corruption Acts

There is a non-exhaustive list of public officials set out in section 1 of the Prevention of Corruption Acts. See question 2.

#### Public Bodies Acts

The Public Bodies Acts define a public official as being a person who is an office holder, director or employee of, a public body. ‘Public body’ itself is extensively defined as meaning any county, town or city council, any board, commissioners or other body which has power to act under any legislation relating to local government or the public health or otherwise to administer money raised by taxes.

#### Ethics Act

The Ethics Act, by its nature, applies only in respect of public officials. Therefore, it has no single definition of public officials, but rather divides public officials into categories, to which differing rules apply. For example, an ‘office-holder’ faces more stringent oversight than a public servant.

An ‘office-holder’ under the Ethics Act generally means a minister in the Irish government and certain other members of the Irish parliament. The term ‘public servant’ encompasses a wide number of persons, and essentially covers all civil servants above the grade of principal officer in the civil service, as well as statutory commissioners and officers, ombudsmen and employees of state-owned and state-controlled companies.

#### Theft and Fraud Act

The Theft and Fraud Act defines public officials as either:

- an official of the European Community, itself defined as including an official or contracted employee of the European Communities or a secondeo to the European Communities; or
- a national official, including any national official of another member state; this is generally understood as being a national official, as defined by the national law of the member state in which the official resides.

### 25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Public servants and elected members of the Irish parliament may participate in commercial activities but are required to disclose the following interests under the Ethics Act:

- occupational income above a certain threshold, other than that received as an office-holder or member;
- shares;
- directorships;
- land and buildings above a certain value;
- remunerated position as a lobbyist; or
- contracts with the Irish state above a certain value.

In addition, an office-holder is required to disclose any interests of the office holder’s spouse, civil partner, child, or child of a spouse or civil partner, which could materially influence the performance of the office-holder’s function. Furthermore, if the office holder or a person connected to the office-holder has a material interest in the performance of a function of his office, there is a requirement to furnish a statement of the nature of the interest.

### 26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Irish anti-corruption legislation does not take the type of gift, consideration or advantage into account when determining if an offence has been committed but focuses on whether the elements of the particular offence have been established, including whether the gift has been given corruptly.

### 27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

A gift or gratuity that is not given ‘corruptly’ will fall outside the scope of the Public Bodies Acts and Prevention of Corruption Acts and will therefore be permissible.

Section 15 of the Ethics Act provides that gifts to office-holders that exceed €650 are deemed to be a gift given to the Irish state and must be declared by the recipient as soon as possible after receipt.

The Guidelines for Office-Holders require office-holders to surrender such gifts. These provisions do not apply to a gift given by a friend, relative or civil partner for personal reasons or given pursuant to another office, a capacity or position (other than that of office holder).

The SIPO Commission has also published Guidelines for Public Servants that cover a wider range of persons than 'office-holder', who would commonly be considered 'public officials'. These guidelines require that gifts in excess of €650 be disclosed by the recipient, but do not require their surrender.

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### 28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Yes. There is no distinction drawn for the purposes of the commission of corruption offences in the Prevention of Corruption Acts between persons employed by public and private organisations. However the presumptions of corruption detailed in question 2 apply only to public officials.

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### 29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

#### Public Bodies Acts

On summary conviction for an offence under the Public Bodies Acts, an individual may be liable to a fine not exceeding €2,500 or imprisonment for up to 12 months, or both. On indictment an individual may be liable to conviction or a fine of up to €111,102.08 or imprisonment for up to seven years, or both.

The court can also direct the convicted person to pay to his or her employer the amount or value of any gift, loan, fee or reward received by him or her. An employee or officer of a public body may also be liable to forfeit his or her right and claim to any compensation or pension to which he or she would otherwise have been entitled.

### Ethics Act

On summary conviction, a person is liable to a fine of up to €2,500 or imprisonment for up to six months, or both, while for a conviction on indictment, a person will be liable to a fine of up to €44,450 or imprisonment for a term of up to three years, or both.

### Prevention of Corruption Acts and Theft and Fraud Act

The sanctions are the same as those set out in question 15.

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### 30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

See question 6.

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### 31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

To date, a small amount of domestic bribery law enforcement has taken place and this has focused on domestic public bribery of Irish public officials and public employees for corruption. The Group of States against Corruption (GRECO) has noted that there were 17 prosecutions directed under the Prevention of Corruption Acts between 2005 and 2008, with imprisonment imposed in four cases, suspended prison sentences imposed in six cases, and fines being imposed in the remainder.

In more recent years there have been increased actions against politicians. In June 2012, Fred Forsey, a former councillor and mayor, was convicted of corruption offences. In July 2013, an ongoing criminal trial against a businessman, a current Irish councillor and three former Irish councillors one of whom was also previously an Irish senator, collapsed due to the ill-health of the principal witness in the matter and is unlikely to come to trial again.

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