



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Ireland: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption law in Ireland.

It will cover the definition of bribery, regulation, compliance, liability and enforcement as well as insight and opinion and any upcoming legal changes planned for their respective country.

This Q&A is part of the global guide. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-corruption/>



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1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

Common Law Offences

At common law, 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. These common law offences of bribery and attempted bribery are punishable by imprisonment or a fine, or both

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

Statutory Offences

The principal statutory sources of bribery law in Ireland are:

- the Public Bodies Corrupt Practices Act 1889, as amended by the Prevention of Corruption Act 1916 and the Ethics in Public Office Act 1995 (the “Public Bodies Act”).
- 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 Act”).

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

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

- the Garda National Economic Crime Bureau (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 in Public Office Act 1995 (as amended). Following an investigation, the SIPO Commission may make a report to the Director of Public Prosecutions if it is of the opinion that an office holder or public servant the subject of the investigation has committed an offence.

3. How is bribery defined?

The Public Bodies Act

The principal offences under the Public Bodies Act 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,
- an office holder or his or her special adviser or a director of, or occupier of a position of employment in, a public body,
- doing or forbearing to do anything in which the public body is concerned.

The term 'corruptly' is not defined in the Public Bodies Act.

The Prevention of Corruption Act

The Prevention of Corruption Act prohibits three offences, commencing with 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 whereby 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 Criminal Justice (Theft and Fraud Offences) Act 2001 (the "Theft and Fraud Act") incorporates into 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 damage the EU's financial interests.

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?

Anti-corruption legislation in Ireland generally prohibits bribery of both public officials and private individuals committed in Ireland and, in certain circumstances, 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.

Various presumptions of corruption arise under the Public Bodies Act, the Prevention of Corruption Act 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 Act 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.

The constitutionality of the presumption of corruption was recently upheld by the Irish Court of Appeal in the People (DPP) v Fred Forsey [2016] IECA 233. This case is subject to a Supreme Court appeal which is anticipated in 2018. The Supreme Court is expected to provide certainty to the issue of the constitutionality of the presumption of corruption in given circumstances.

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

An employer may have a civil cause of action to recover damages from an employee who has committed an act of bribery that 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 European Union (Award of Public Authority Contracts) Regulations 2016 prohibit a natural or legal person from participating in the procurement procedure for public contracts where that person has been convicted of certain offences, including a corruption offence. The Office of Public Procurement has also issued guidance on the ethical requirements on those involved in the public procurement process.

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.

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

Prevention of Corruption Act

Offences under the Prevention of Corruption Act are triable both summarily and on indictment. A person guilty of either a corruption offence or the discrete offence of corruption in office, under the Prevention of Corruption Act, is liable to a small fine or imprisonment or both. At the upper limit, a person convicted under the Prevention of Corruption Act is liable for an unlimited fine or imprisonment for a term not exceeding 10 years or both.

An employer summarily convicted of an offence under the whistle-blower protection in the Prevention of Corruption Act 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 Act 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 for 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 Act, a member of the Irish police may seize any gift or consideration that they suspect to be a gift or consideration within the meaning of the Prevention of Corruption Act. The gift or consideration can only be detained for 48 hours unless a Circuit Court order is obtained which stipulates that an extended period of time is necessary to properly investigate the 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 1996–2016 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.

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

The Prevention of Corruption Act and the Criminal Justice (Theft and Fraud Offences) Act 2001 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’.

Separately, the Ethics in Public Office Act 1995 creates an obligation on certain categories of public office holders to furnish an annual statement of registrable interests disclosing certain travel facilities, living accommodation, meals or entertainment worth more than €650 and received outside the State.

8. Are political contributions regulated?

The Electoral Act 1997 (as amended) (the “Electoral Act”) places a limit on permissible political donations in Ireland, and donations over a certain amount must be disclosed to the SIPO Commission.

This applies to members of the Houses of the Irish Parliament and representatives in the European Parliament (“members”) who must furnish a donations statement (detailing donations exceeding €600) to the SIPO Commission each year together with a statutory declaration confirming the members’ satisfaction with the accuracy of the statement.

The Electoral Act also applies to donors in some cases. The following are the key requirements of the Electoral Act:

- A member / candidate can accept a maximum donation of €1,000 from a particular person

in any one year.

- In any one year, donations exceeding €100 will obligate a member to open and maintain a political donations account in a financial institution based in Ireland and he / she must certify that all donations in that year have been lodged in that account.
- A political donation from a particular person cannot be accepted if it exceeds €2,500 in any one year.
- Donations exceeding €1,500 by the same donor to multiple candidates / members of the same party or the party itself in any one year must be disclosed on a donation statement.
- Anonymous donations cannot be accepted if it exceeds €100 unless the name and address of the person by or on whose behalf the donation is made is disclosed.
- Cash donations from a particular person are limited to a maximum of €200 in a particular year.
- Corporate donations exceeding €200 in a particular year cannot be accepted unless the donor is registered as a corporate donor and issues a statement to the recipient detailing that the donation has been approved by the corporate entity.
- A member may not accept a foreign donation of any value (other than a donation from an Irish citizen from abroad).

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

There is no distinction drawn in Irish law between facilitation payments and other types of corrupt payments. As such, facilitation payments will be illegal if they fulfil the elements of the relevant offences.

10. Are there any defences available?

There are currently no defences available.

See Q18 for possible developments in this regard.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

There is no authority to suggest that compliance programs currently constitute a mitigating factor to reduce/eliminate liability for bribery offences.

See Q18 for possible developments in this regard.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

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 Act, where a company commits an offence under that legislation, an officer of that company 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. To date, however, there are no recorded prosecutions of companies or their officers under Irish anti-corruption legislation.

See Q18 for possible developments in this regard.

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 maintain a cross-departmental website to assist in tackling bribery and corruption, www.anticorruption.ie. This website contains FAQs in relation to tackling bribery and corruption and what to do if one is suspicious of corrupt practices.

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

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

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

The Protected Disclosures Act 2014, which applies to all 'workers', including employees, contractors and trainees, provides similar protections to that under the Irish anti-corruption legislation, although the motivation for making the disclosure is irrelevant as to whether it is a 'protected' disclosure.

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

It is not possible to ascertain precisely how many government authority investigations into bribery take place. Government statistics on recorded crime offences are grouped more broadly. Bribery is encompassed within the broader statistical category of Fraud, deception and related offences, of which there are typically between four and six thousand annually. However, more granular statistics were available for the period 2003 to 2012, which indicate that between 2 and 6 corruption offences were recorded annually.

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

As detailed in Q14 above and Q18 below, government efforts at creating a modernised framework for carrying out such investigations and enforcement have escalated, with the introduction of significant whistleblower protections in 2010 and 2014 and the introduction of the Criminal Justice (Corruption Offences) Bill in 2017. This is indicative of increasing focus being placed on this area by authorities.

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

There is a process of judicial review of decisions in Ireland by which the courts examine the decisions of public bodies to ensure that they have acted lawfully and fairly. This is not concerned with the decision itself; rather, it is concerned with the decision making process. The court conducts a review of the process by which a public body has reached a decision to assess whether it was validly made. For a decision of a public body to be judicially reviewable, the applicant must have sufficient interest in the case and there must be a public law dimension.

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

The Government sponsored Criminal Justice (Corruption Offences) Bill 2017 (the "Bill") was presented on 31 October 2017. The Bill aims to consolidate and reform Ireland's anti-corruption and bribery laws.

The Bill provides for the offence of both active (bribe-giving) and passive (bribe-taking) bribery, which criminalises both giving and receiving a bribe in return for a person doing an act in relation to their office, employment, position or business and applies without distinction to the public and private sectors.

The term "corruptly" is defined in the Bill as acting with an improper purpose personally or by influencing another person, whether by (a) making a false or misleading statement; (b) withholding or altering a document or information or (c) by other means.

The Bill creates a new offence of active and passive trading in influence which prohibits the active and passive bribery of a person who may be in a position to exert an improper influence over an act of a public official. For the purposes of this offence, it is immaterial, whether or not:

(a) the alleged ability to exert an improper influence existed;

(b) the influence is exerted;

(c) the supposed influence leads to the intended result, or

(d) the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence.

The Bill criminalises the use by an Irish official of confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person.

The Bill also creates the offences of (i) giving a gift, consideration or advantage for the purposes of facilitating a corruption offence, (ii) creating or using a false document with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to their prejudice or the prejudice of another and (iii) intimidation by threatening harm with the intention of corruptly influencing a person in relation to his or her office, employment, position or business.

Part 3 of the Bill provides for extra-territorial jurisdiction in relation to corruption occurring outside Ireland where the acts are committed by Irish persons or entities or take place at least partially in Ireland.

Part 4 of the Bill provides for various presumptions of corruption in respect of certain corruption offences to include where:

- a gift, consideration or advantage has been given to an official or a connected person of an official by a person who had an interest in the discharge by the official of any of a number of prescribed functions;
- a gift, consideration or advantage has been given to an official or a connected person of an official and the official performed or omitted to perform any of a number of prescribed functions giving rise to an undue advantage or benefit to the person who gave the gift, consideration or advantage or on whose behalf it was given;
- a political donation that is of a type prohibited by law or in excess of the statutory threshold is made to certain categories of public office holders and is not returned to the donor or notified to the SIPO Commission, as necessary, and where the donor had an interest in the public office holder carrying out or refraining from doing any act related to their office or position; and
- an Irish public official or office holder has property that should but has not been declared in a statement of registerable interests, it shall be presumed, unless the contrary is proved, that the property concerned derives from a gift, consideration or advantage

received in return for the person doing an act in relation to his office, employment, position or business.

In an important development, the Bill proposes a new criminal offence under which a company shall be held liable for the corrupt actions committed for the benefit of the company by a director, manager, secretary, employee, agent or subsidiary. The Bill provides for a defence, where the body corporate took all reasonable steps and exercised all due diligence to avoid the commission of the offence. As a result, companies will need to ensure that they have robust anti-bribery and corruption policies and procedures in place.

The Bill sets out a range of penalties for offences. All summary offences are subject to imprisonment of up to 12 months and Class A fines. Indictable offences (with limited exceptions) are subject to unlimited fines and imprisonment of up to 10 years. In addition, the Bill includes provision for the forfeiture of office held by an Irish official following conviction on indictment where the court is satisfied that to do so would be in the interests of justice and in the interests of maintaining or restoring public confidence in the public administration of the State. The court may also prohibit such a person from seeking to hold or occupy certain public offices for a specified period of up to 10 years. The Bill also includes a facility for the seizure of bribes and forfeiture of suspected bribes.

An order has been made for the Bill to go to the second stage of the legislative process and it is not expected to be enacted until the second half of 2018. Accordingly, we can expect to see changes to the provisions as it passes through each stage.

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

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

- the EU Convention on the Protection of the European Communities Financial Interests (and Protocols) – entered into force on 17 October 2002;
- the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions – entered into force on 21 November 2003;
- the Council of Europe Criminal Law Convention on Corruption – entered into force on 1 February 2004;
- the 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;

- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption - entered into force on 1 November 2005;
- the UN Convention against Transnational Organized Crime - entered into force on 17 July 2010; and
- the UN Convention against Corruption - entered into force on 9 December 2011.

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

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.

Any requirement to disclose documents obtained through an internal investigation to the Irish authorities is qualified by legal professional privilege. In Ireland, documentation may attract legal professional privilege, either in the form of legal advice privilege or litigation privilege. Legal advice privilege arises in communications between a lawyer and their client where there is no actual or potential litigation, but the client is seeking advice and not merely legal assistance. Litigation privilege applies to communications between a lawyer and a client made in the context of contemplated or existing litigation. It is the broader form of legal professional privilege and also covers communications with third parties, such as experts. Privilege over any document is a right of the client, which he or she may choose to waive. In general, the disclosure of a privileged document to a third party will waive privilege. In certain circumstances and subject to specific conditions, the Irish courts will accept that disclosure of an otherwise privileged document to a third party for a limited and specified purpose can occur without privilege being waived.

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?

To date, a limited amount of domestic bribery law enforcement has taken place. This has focused on domestic public bribery of Irish public officials and public employees for corruption. The Group of States against Corruption (GRECO) published its fourth evaluation report on corruption prevention in Ireland on 21 November 2014. While GRECO praised the transparency of the Irish legislative process and the independence of the judiciary and prosecution service, it highlighted concerns regarding corruption in Ireland and made various recommendations to safeguard against corruption. On 29 June 2017, GRECO published a compliance report relating to the 2014 evaluation. The 2017 compliance report found that Ireland had fully implemented 3 of the recommendations and partly implemented a further 3 recommendations. GRECO has concluded that Ireland's low level of compliance with the recommendations is "globally unsatisfactory" and Ireland has been asked to report again on progress by 31 March 2018.□

Similarly, Transparency International's eleventh enforcement review of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention) published on 20 August 2015 (the last available report) ranked Ireland as conducting 'little or no enforcement' of the Convention.

On 25 January 2017, Transparency International published its 2016 Corruption Perceptions Index. This measures the perceived levels of public sector corruption in 176 countries. Ireland ranks 19th on the index and its score has slightly worsened from 75 to 73 from 2015 to 2016. However, according to the Index, Ireland continues to be perceived as one of the least corrupt countries in the world.

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

The publication of the Criminal Justice (Corruption Offences) Bill 2017 is focusing organisations' minds on the necessity to put in place adequate policies and procedures to prevent their officers and agents etc. engaging in corrupt practices on their behalf. This is currently not, nor has it been, a factor for domestic businesses to deal with until now. However, organisations in Ireland that carry out business internationally, and in particular in the UK since the passage of the Bribery Act 2010, have had a focus on putting in place such policies and procedures to mitigate against the risk of derivative liability falling on the company for the acts of its officers and agents.

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

Proving corruption offences in Ireland requires prosecutors to prove one acted “corruptly”, which includes acting with an improper purpose. As mentioned, in certain circumstances the burden of proof is reversed when a party can be presumed (a presumption which is rebuttable) to have acted corruptly. However, in those other circumstances, prosecutors must show that defendants acted with improper purpose in their actions, which can be a difficult hurdle to overcome.

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 noted, the Criminal Justice (Corruption Offences) Bill 2017 proposes a new criminal offence under which a company shall be held liable for the corrupt actions committed for the benefit of the company by a director, manager, secretary, employee, agent or subsidiary. The Bill provides for a defence, where the body corporate took all reasonable steps and exercised all due diligence to avoid the commission of the offence. As a result, companies will need to ensure that they have robust anti-bribery and corruption policies and procedures in place.

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

Our view is that the 2017 Bill, coupled with the relatively new whistleblower protections, and sufficient resources for the Director of Public Prosecutions, will aid in the process of preventing, investigating and prosecuting cases of bribery and corruption. The current efforts reflect increased urgency and purpose, which we view as a positive development in this area.