

Anti-corruption & Bribery

Trends and climate

Trends

Have there been any recent changes in the enforcement of anti-corruption regulations?

Ireland

McCann FitzGerald

There have been no specific changes to the enforcement of Irish anti-corruption legislation in recent years. However, there appears to be an increased willingness to prosecute corruption and to impose custodial sentences, where appropriate.

New laws promoting whistleblowing and transparency as well as the regulation of lobbying are also likely to facilitate the detection of corruption. The Protected Disclosures Act 2014 was introduced to protect whistleblowers in both the public and private sectors from the negative repercussions of reporting instances of wrongdoing which they encounter in the workplace. The Regulation of Lobbying Act 2015 is Ireland's first legislative attempt to regulate lobbying and creates a mandatory online register for those carrying out lobbying activities. The Companies Act 2014 and the Freedom of Information Act 2014 have also contributed to the goal of achieving a more transparent and accountable society.

Political corruption in Ireland has frequently been investigated by a tribunal of inquiry established for that purpose. Recently, the Houses of the *Oireachtas* (Inquiries, Privileges & Procedures) Act 2013 established a statutory framework for *Dáil Éireann*, the principal house of Parliament in Ireland, to investigate any matter of significant public importance, which could include allegations of political corruption.

The Proceeds of Crime (Amendment) Act 2016 is designed to facilitate the seizure of property which is suspected to be the proceeds of crime by expanding the powers of the Criminal Assets Bureau to seize those proceeds. This act amends the Proceeds of Crime Act 1996 in two key respects. First, it allows the Criminal Assets Bureau to seize property which it suspects to be the proceeds of crime for up to 21 days. Second, it reduces the threshold value of property which can be pursued by the Criminal Assets Bureau from €13,000 to €5,000.

[Back to top](#)

Legislative activity

Are there plans for any changes to the law in this area?

Ireland

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There are plans to modernise and consolidate the law on corruption and bribery, and to update the law regulating conflicts of interest.

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Changes to corruption and bribery law

In 2012, the then government published the general scheme of the proposed Criminal Justice (Corruption) Bill. The bill is intended to modernise and strengthen Irish bribery laws, including through the consolidation of the existing bribery offences set out in the Prevention of Corruption Acts 1889 to 2010.

The General Scheme criminalises both active and passive bribery, which are also criminalised under the existing law. In addition, it contains two new offences of active and passive trading in influence, which will make it illegal to offer or accept any gift, consideration or advantage in connection with inducing another person to exert an improper influence over the acts or omissions of an Irish public official or foreign public official. It also sets out a specific offence of bribing a foreign public official and contains a new offence of 'making reckless payments', whereby an individual is guilty of an offence if he or she provides an advantage to another person knowing that, or being reckless as to whether, the

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advantage will be used to facilitate the commission of a corruption offence.

The General Scheme contains a new definition of the term 'corruptly', which it defines widely to include any act or omission done or made:

- in breach of duty;
- without due impartiality;
- without lawful authority;
- in breach of a relevant code of ethics or discipline;
- in pursuit of any undue benefit, in a deceitful, dishonest or misleading manner; or
- with an improper purpose.

One of the most significant changes proposed in the General Scheme is the introduction of a new 'failure to supervise' type of offence, which provides that where a corruption offence is committed by a director, secretary, officer, employee, subsidiary or agent of the corporate body with the intention of obtaining or retaining an advantage for the corporate body, the corporate body will itself be guilty of an offence. It will be a defence for the corporate body to prove that it has taken "all reasonable steps" and exercised "all due diligence" to avoid the commission of the offence.

The General Scheme also provides for a presumption of corrupt enrichment, which arises where an Irish public official enjoys a standard of living beyond that which is commensurate with his or her salary or has control of a disproportionate amount of property.

The current government's legislative programme indicates that the bill is still at the drafting stage and is not expected to be published before 2017.

Conflicts of interest

In December 2015 the Public Sector Standards Bill 2015 was initiated, which will create a new framework for the disclosure of conflicts of interest by public officials. The bill aims to:

- enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks;
- achieve a more dynamic and risk-based system of compliance; and
- ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.

[Back to top](#)

Legal framework

Authorities

Which authorities are responsible for investigating bribery and corruption in your jurisdiction?

Ireland

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Primary responsibility for investigating corruption rests with *An Garda Síochána*, the national police force, and in particular the *Garda* Bureau of Fraud Investigation. The Criminal Assets Bureau is specifically responsible for investigating and recovering the proceeds of crime on a civil basis.

Historically, allegations of corruption against politicians and other high-profile figures have been pursued via a tribunal of inquiry rather than through a criminal process. Ireland's Parliament, the *Oireachtas*, has the power to establish such a tribunal and to charge it with investigating specified matters, to make findings and, where relevant, to make recommendations relating to its findings.

[Back to top](#)

Domestic law

What are the key legislative and regulatory provisions relating to bribery and corruption in your jurisdiction?

Ireland

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Bribery is an offence both at common law and under statute.

At common law, it is an offence to bribe or attempt to bribe a public officer to act otherwise than in accordance with his or her duty.

The statutory law concerning corruption and bribery in Ireland is primarily set out in the Prevention of Corruption Acts 1889 to 2010, in particular the Public Bodies Corrupt Practices Act 1889 as amended and the Prevention of Corruption Act 1906 as amended. The Criminal Justice (Theft and Fraud Offences) Act 2001 also contains a number of offences relating to bribery affecting the European Union's financial interests.

The Prevention of Corruption (Amendment) Act 2001 contains a separate offence of corruption in public office which makes it an offence for a public official to commit any act in relation to his or her office or position for the purpose of corruptly obtaining an advantage for himself or herself, or any other person.

Other discrete pieces of legislation - including the Protected Disclosures Act 2014, various Criminal Justice Acts and the Companies Act 2014 - contain important provisions regarding disclosure obligations and accounting offences, among other things.

[Back to top](#)

International conventions

What international anti-corruption conventions apply in your jurisdiction?

Ireland

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Ireland is a signatory to the following international corruption and bribery-related conventions:

- the Council of Europe Criminal Law Convention on Corruption;
- the Council of Europe Civil Law Convention on Corruption;
- the Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- the EU Convention on the Protection of the European Communities Financial Interests (and Protocols)
- the UN Convention against Corruption;
- the UN Convention against Transnational Organised Crime;
- the Convention of the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union; and
- the additional Protocol to the Council of Europe Criminal Law Convention on Corruption.

[Back to top](#)

Specific offences and restrictions

Offences

What are the key corruption and bribery offences in your jurisdiction?

Ireland

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The key statutory corruption and bribery offences are set out in the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Criminal Justice (Theft and Fraud Offences) Act 2001, as amended.

The 1889 act is specifically concerned with bribery involving public officials. More broadly, the Prevention of Corruption Act 1906 is concerned with bribery involving an 'agent', which it defines to include any person acting for or on behalf of another. It therefore covers both the bribery of public officials and bribery in the private sphere.

Under the Prevention of Corruption Act 1906, it is an offence:

- for an agent or any other person to corruptly accept or obtain, or agree to accept or attempt to obtain, for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business; or
- for any person to corruptly give, agree to give or offer any 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 or her office or position or his or her principal's affairs or business.

The 1906 act defines the term 'corruptly' to include "acting with an improper purpose, personally or by influencing another person, whether by means of making a false or misleading statement, by means of withholding, concealing, altering or destroying a document or by any other means".

The Criminal Justice (Theft and Fraud Offences) Act 2001 establishes the offences of active and passive corruption

respectively pursuant to the First Protocol to the EU Convention on the European Communities' Financial Interests. These offences apply to corruption involving EU officials or officials of EU member states that is likely to damage the European Union's financial interests.

[Back to top](#)

Hospitality restrictions

Are specific restrictions in place regarding the provision of hospitality (eg, gifts, travel expenses, meals and entertainment)? If so, what are the details?

Ireland

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Irish law criminalises gifts and other advantages given for corrupt purposes. It appears that any pecuniary benefit, no matter how small, is capable of constituting a bribe, including travel expenses, meals and entertainment, as long as it is given with the required intent. The Prevention of Corruption Acts provide for a presumption of corruption in respect of any money, gift or other consideration paid, given to or received by a public official by a person holding or seeking to obtain a government contract.

Under Irish law, it is also an offence for a public official to commit any act in relation to his or her office or position for the purpose of corruptly obtaining an advantage for himself or any other person.

The Ethics in Public Office Acts 1995 and 2001 require both members of Parliament and 'officeholders' to disclose certain 'registrable interests' on an annual basis. These include gifts in excess of €650 and certain travel facilities, living accommodation, meals and entertainment supplied outside of Ireland and in excess of €650. Similar rules apply at local government level under Part 15 of the Local Government Act 2001. The 2001 act also prohibits a local authority member or employee from seeking, exacting or accepting from any person, other than the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office.

[Back to top](#)

Facilitation payments

What are the rules relating to facilitation payments?

Ireland

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No distinct rules govern facilitation payments under Irish law; where such payments are made or received corruptly to a public official or an agent with the purpose of influencing the performance of his or her duties, they are likely to be considered as bribes. Where a payment is of small value, this may suggest that it is not intended to be a bribe; however, even small payments may be bribes if intended to influence an agent's behaviour.

[Back to top](#)

Liability

Scope of liability

Can both individuals and companies be held liable under anti-corruption rules in your jurisdiction?

Ireland

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Both individuals and companies can be held liable under anti-corruption rules in Ireland. In addition, the Prevention of Corruption Acts provide for a form of derivative managerial liability which arises where a corporate body commits an offence, which is shown to have been committed with the consent, connivance or approval of an officer of the company, or to have been attributable to any neglect on his or her part. In such cases, the officer will also be guilty of an offence and will be liable to be proceeded against and punished as if he or she were guilty of the bribery itself. It appears

that there is no need for the company to have been convicted of the offence in order to prosecute the officer; it will suffice to prove that the company has committed the offence.

[Back to top](#)

Can agents or facilitating parties be held liable for bribery offences and if so, under what circumstances?

Ireland

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Under the Prevention of Corruption Acts, both agents and facilitating parties can be held liable for bribery offences once the other elements of the offences are satisfied. The acts also cover third-party bribery where the benefit is not passed on to the relevant public official or agent, even if the public official or agent is unaware of the benefit's existence.

[Back to top](#)

Foreign companies

Can foreign companies be prosecuted for corruption in your jurisdiction?

Ireland

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Foreign companies can be prosecuted for corruption before the Irish courts as long as the relevant act of corruption has a sufficient connection with the Irish state. This means that at least one of the acts alleged to constitute the offence must have been committed in the state notwithstanding that other acts constituting the offence were committed outside the state.

[Back to top](#)

Whistleblowing and self-reporting

Whistleblowing

Are whistleblowers protected in your jurisdiction?

Ireland

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Whistleblowers are protected in Ireland by the Protected Disclosures Act 2014. Previously, the protection of whistleblowers was sector specific in Ireland (eg, in the areas of bribery, child protection, healthcare and workplace safety). The 2014 act introduced for the first time a general suite of employment protections and legal immunities for workers who may be at risk of penalisation by their employers or adverse action from colleagues or other third parties. Its protections extend to both the public and private sectors and cover employees, contractors, volunteers, temporary workers, former employees, apprentices, trainees, certain individuals on work experience, agency workers, members of *An Garda Síochána* and the defence forces and civil servants. The Protected Disclosures Act incentivises internal reporting and encourages the vast majority of disclosures to be made to the employer in the first instance. However, it provides for alternative avenues of disclosure where disclosure to the employer is inappropriate, ineffective or impossible.

It is prudent for each private body (and obligatory for public bodies) to have credible internal whistleblowing policies, as this will improve the chances of the body being alerted to wrongdoing quickly. This in turn will enable the body to take effective steps to deal with the matter before it becomes an external issue, thus protecting its control of the issue where an investment may be needed.

[Back to top](#)

Self-reporting

Is it common for leniency to be shown to organisations that self-report and/or cooperate with authorities? If so, what process must be followed?

Ireland

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Irish law does not provide for a process through which companies can self-report corruption in exchange for enhanced leniency. Self-reporting, where it occurs, may be taken into account at the sentencing stage as a mitigating factor.

[Back to top](#)

Dispute resolution and risk management

Pre-court settlements

Is it possible for anti-corruption cases to be settled before trial by means of plea bargaining or settlement agreements?

Ireland

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Plea bargaining with the court or the director of public prosecutions, who is responsible for prosecuting corruption offences, is not permissible in Ireland. This derives from the fact that the Irish Constitution mandates that justice be administered in public. As in the case of self-reporting, cooperation with an investigation may be considered by the judge as a mitigating factor at the sentencing stage. It is widely understood that cooperation is likely to be considered a strong mitigating factor.

[Back to top](#)

Defences

Are any types of payment procedure exempt from liability under the corruption regulations in your jurisdiction?

Ireland

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There are no specific exemptions from liability under the corruption regulations for any payment procedure. The requirement that payments be made 'corruptly' means that legitimate payments will not be considered as corrupt payments under the Prevention of Corruption Acts.

[Back to top](#)

What other defences are available and who can qualify?

Ireland

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There are no specific defences to a corruption allegation. While the prosecution of less serious summary offences is subject to time limits, these time limits do not apply to more serious offences which are being prosecuted on indictment. However, if a considerable amount of time has elapsed since the commission of an offence, the courts will not permit a trial to go ahead if this elapse will prejudice the accused's right to a fair trial.

[Back to top](#)

Risk management

What compliance procedures and policies can a company put in place to assist in the creation

of safe harbours?

Ireland

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The basis for imposing criminal liability on a company under Irish law is not entirely clear, although it is likely that the Irish courts would be prepared to hold a company liable for the actions of an officer once it could be established that he or she represented the directing mind and will of the company.

A company that has in place effective anti-bribery and corruption compliance procedures may be able to rely on these procedures to show that the actions of a particular officer do not represent its directing mind and will.

Significantly, according to the General Scheme of the Criminal Justice Bill, the government intends to introduce a form of 'failure to supervise' offence, which will impose liability on a commercial entity (including both bodies corporate and unincorporated bodies) that fails adequately to supervise its employees and agents. Specifically, where such a person, acting on behalf of the entity, commits bribery with the intention of obtaining or retaining business or an advantage in the conduct of business, the entity will be liable unless it has taken all reasonable steps and all due diligence to prevent that offence. Compliance procedures and policies will play a vital role in ensuring that an entity can avoid liability under the failure to supervise offence, once it is enacted.

A number of useful resources are available to companies that wish to put in place effective compliance procedures and policies. For example, Ireland is a signatory to UN and Organisation for Economic Cooperation and Development anti-bribery conventions, and both of those organisations have jointly published the Anti-corruption Ethics and Compliance Handbook for Business.

Generally, a compliance programme should be clearly supported by senior management, with this support reinforced at management levels throughout the company. The programme should adopt a risk-based approach customised to the company's individual needs. Factors relevant to an assessment of risk include:

- the company's size;
- the sector in which it operates;
- third countries in which it operates; and
- the extent of its use of third parties.

Identified risks frequently include gifts, hospitality, entertainment and expenses, customer travel and third parties.

The compliance programme should include a code of conduct as well as compliance policies and guidelines. The code of conduct should emphasise the importance of ethical behaviour generally, as well as clearly forbidding employees from engaging in bribery on the company's behalf.

The compliance policy should set out the company's approach to compliance in more detail. It should also address particular risk factors, such as gifts, hospitality, entertainment and expenses, as well as third-party due diligence. These may also be addressed through individual policies.

The compliance programme should be effectively communicated throughout the company, including through regular training, and staff should know whom to contact for guidance on the programme's application. The effectiveness of the compliance programme should be subject to regular monitoring and review, and penalties should be imposed for any breach of its requirements.

[Back to top](#)

Record keeping and reporting

Record keeping and accounting

What legislation governs the requirements for record keeping and accounting in your jurisdiction?

Ireland

McCann FitzGerald

The Companies Act 2014 sets out the financial reporting and accounting rules applicable to public and private limited companies and the various other types of company that may be formed under the act.

False accounting is an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001. Liability for false accounting arises where a person dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another:

- destroys, defaces, conceals or falsifies any account or any document made or required for any accounting purpose;
- fails to make or complete any account or any such document; or

- in furnishing information for any purpose, produces or makes use of any account, or any such document which, to his or her knowledge, is or may be misleading, false or deceptive in a material particular.

[Back to top](#)

What are the requirements for record keeping?

Ireland

McCann FitzGerald

Under the Companies Act 2014, a company must keep adequate accounting records which are sufficient to correctly record and explain its transactions and to enable, at any time, the determination of the company's assets, liabilities, financial position and profit or loss with reasonable accuracy. Company directors should approve financial statements for the company (or group) only where they are satisfied that they give a true and fair view of the assets, liabilities and financial position as at the end of the financial year, and of the profit and loss for the year. Where a company is wound up in circumstances where it is unable to pay its debts, directors may be held personally liable for a failure to keep adequate accounting records. Under the act, it is an offence for a person to falsify, conceal, destroy or otherwise dispose of documents or records in certain circumstances.

[Back to top](#)

Reporting

What are the requirements for companies regarding disclosure of potential violations of anti-corruption regulations?

Ireland

McCann FitzGerald

Under the Criminal Justice Act 2011, it is an offence for a person, including a company, to fail to disclose to the police any information which it knows or believes might be of material assistance in preventing the commission of a bribery offence under the Prevention of Corruption Act 1906, or securing the apprehension, prosecution or conviction of any other person for such an offence. Such a disclosure should be made "as soon as practicable".

Under the Criminal Justice (Theft and Fraud Offences) Act 2001, any person who audits the accounts of a firm must report to the police any indications that an offence under the act may have been committed. Such a disclosure, made in good faith, will not be treated as a breach of any restriction imposed by statute or otherwise or involve the person in liability of any kind. Where a relevant person fails, without reasonable excuse, to make a disclosure in those circumstances, he or she is guilty of an offence under the act.

Statutory auditors are subject to reporting requirements under the Companies Act 2014 in respect of certain reportable offences, including offences regarding accounting records and making false statements in returns, financial statements and similar. These reporting requirements arise where a statutory auditor comes across information while carrying out an audit of a company's financial statement, which leads him or her to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a reportable offence. The statutory auditor must make the relevant report to the Office of the Director of Corporate Enforcement.

Under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, designated persons are obliged to report suspected offences of money laundering or terrorist financing.

[Back to top](#)

Penalties

Individuals

What penalties are available to the courts for violations of corruption laws by individuals?

Ireland

McCann FitzGerald

A person guilty of an offence under the Prevention of Corruption Acts 1889 or 1906 is liable to a fine and imprisonment. The terms of imprisonment will vary depending on the seriousness of the offence, up to a maximum of 10 years. The

proceeds of bribery and corruption may also be subject to confiscation, on either a criminal or a civil basis, including any profits resulting from the bribery and corruption.

[Back to top](#)

Companies or organisations

What penalties are available to the courts for violations of corruption laws by companies or organisations?

Ireland

McCann FitzGerald

Companies or organisations that have been convicted of corruption offences will be subject to fines. The proceeds of the offence may also be confiscated.

[Back to top](#)

Law stated date

Correct as of

Please state the date as of which the law stated here is accurate.

Ireland

McCann FitzGerald

September 30 2016.

[Back to top](#)