



# Ireland - Global bribery offenses guide

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## 1) What is the legal framework governing bribery in the Ireland?

The Criminal Justice (Corruption Offences) Act 2018 (the 2018 Act) is the key legislation governing bribery and corruption in Ireland. The 2018 Act commenced on July 30, 2018, and repealed the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906-2010. The Criminal Justice Act 2011 (the 2011 Act) also governs certain offenses. The Regulation of Lobbying Act 2015 creates requirements for designated public officials and regulates the lobbying process to create a more transparent process and avoid risks of corrupt behavior.

The Ethics in Public Office Act 1995 as amended (the 1995 Act) and the Standards in Public Office Act 2001 (the 2001 Act) (known together (hereinafter the Ethics Acts) govern the conduct of government officials and public servants.

The National Asset Management Agency Act 2009 applies where persons work for the National Asset Management Agency (NAMA) or their debts have been assumed by NAMA.

Civil servants will also be bound by their relevant Code of Conduct.

## 2) What constitutes a bribe?

The 2018 Act makes it an offense for any person to corruptly offer, give to, or accept from a person, a "gift, consideration or advantage" as an inducement to, reward for, or on account of any person doing an act in relation to their office, employment, position or business.

"Corruptly" has a broad definition and includes acting with an improper purpose personally or by influencing another person, whether by means of making a false or misleading statement, withholding, concealing, altering or destroying a document or other information, or by other means.

## 3) What are the principal offenses under this legal framework?

The principal offenses under the 2018 Act are:

- active and passive corruption;
- active and passive trading in influence;
- corruption in relation to office, employment, position or business;
- giving a gift, consideration or advantage that may be used to facilitate an offense;
- creating or using a false document; and

- intimidation.

The 2011 Act creates a positive reporting obligation and it is an offense if a person fails to disclose, as soon as practicable, information which might be of material assistance in preventing the commission by any other person of certain white collar offenses, including corruption, or securing the apprehension, prosecution or conviction of any other person for such an offense.

Under the National Asset Management Agency Act 2009 there is a presumption of corruption where 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.

There also remains the common law offenses of bribery and attempted bribery. However, since the 2018 Act came into force, prosecuting authorities tend to rely on the statutory offenses.

#### 4) What is the jurisdictional reach of the legal framework?

The 2018 Act has extra-territorial reach where the act in question would constitute an offense if it were committed within the state. In these circumstances, regardless of whether the conduct occurred outside the state, the person or company may be held liable and prosecuted within the state, per sections 11, 12 and 13 of the 2018 Act, provided they fall within one of the below categories:

- 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.

#### 5) Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Both individuals and companies can be liable for corruption offenses. This includes public officials, private individuals, bodies corporate and foreign public officials.

There is also individual criminal liability for senior officers of a company for offenses committed by the company with their consent, connivance or willful neglect under section 18(3).

#### 6) Can a parent company be liable for its subsidiary's involvement in bribery?

Under section 18 of the 2018 Act, a parent company may be liable where the offense is carried out by a subsidiary and the offense is carried out with the intention of obtaining or retaining business, or an advantage for the parent company.

#### 7) Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

It is an offense for any person to corruptly give to, or accept from a person, a "gift, consideration or advantage" as an inducement to, reward for, or on account of any person doing an act in relation to their office, employment, position or business. Irish law does not distinguish facilitation payments from corrupt payments, and therefore the payment of a "facilitation payment" will be an offense if it falls within the criteria for a corrupt payment.

#### 8) Does the legal framework restrict political and charitable contributions?

A political or charitable contribution could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so.

Where the donation is to an official who is a member of the Dáil Éireann (Lower House of the Irish Parliament), Seanad Éireann (Upper House of the Irish Parliament), European Parliament or local authority, the donation will be presumed to be corrupt if:

- the donation is above a prescribed amount;
- the person concerned failed to either:
  - return the donation; or
  - notify the Standards in Public Office Commission (or the equivalent local authority body); and
- the donor had an interest in the person concerned doing an act in relation to their position.
- This presumption may be disproved by evidence showing the contrary on the balance of probabilities.

## 9) Does the legal framework place restrictions on corporate hospitality?

The 2018 Act does not specifically address corporate hospitality and does not distinguish between the type or amount of the hospitality offered or accepted. Instead, the 2018 Act focuses on the nature and intent of the gift.

Corporate hospitality could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so.

Public officials are also subject to the Ethics Acts. With certain limited exceptions, a public officials must disclose and potentially surrender any gift or hospitality exceeding an aggregate threshold amount of EUR650 over a particular period (generally an annual period).

Individual public bodies may have their own standards in relation to accepting gifts which should be checked.

## 10) Are there any defenses for bribery offenses?

A corporate body may have a statutory defense where it can demonstrate that it took all reasonable steps and exercised all due diligence to avoid the commission of the offense, under section 18 of the 2018 Act. There is no guidance as to what may constitute "reasonable steps" or "due diligence" - however, it is likely that the court may have regard to the UK equivalent guidance that adequacy of a commercial organization's procedures will be assessed by reference to six key compliance principles, including risk assessment, proportionate procedures, top level commitment, due diligence, communication and training, and monitoring and review. It is important to note however that the UK equivalent legislation refers to "adequate procedures" rather than the higher Irish standard of "all reasonable steps."

The common law defense of duress or necessity may be available to a person accused of bribery offenses if the threats made against them or another person were of death or serious injury; and were sufficiently serious to overwhelm the powers of resistance of an ordinary person.

## 11) What are the key regulatory or enforcement bodies with regard to bribery?

The national police force, An Garda Síochána, is the primary investigatory body, with the National Economic Crime Bureau a specialist division within the force for complex fraud offenses. Cases may be referred by the Garda Síochána to the Department of Public Prosecution for prosecution and enforcement.

There are various other regulatory bodies which may investigate, or assist in investigations, depending on the subject or entity nature, including:

- the Office of the Director of Corporate Enforcement;
- the Office of the Revenue Commissioners;
- the Competition and Consumer Protection Commission;
- the Central Bank of Ireland;
- the Health and Safety Authority;
- the Office of the Data Protection Commission; and
- the Standards in Public Office Commission.

## 12) What are the legal consequences of being found guilty of bribery offenses?

A person found guilty of active and passive trading in influence is liable:

- on summary conviction to:
  - a fine of no more than EUR5,000;
  - imprisonment for a term not exceeding 12 months;
  - an order for the forfeiture; or
  - a combination of any the above penalties.
- on indictment (i.e. a more serious offense) to:
  - an unlimited fine;
  - imprisonment for a term not exceeding five years;
  - an order for forfeiture; or
  - or a combination of any the above penalties.

A person found guilty of any other offense is liable:

- on summary conviction to:
  - a fine of no more than EUR5,000;
  - imprisonment for a term not exceeding 12 months;
  - an order for the forfeiture; or
  - a combination of any the above penalties.
- on indictment (i.e. a more serious offense) to:
  - an unlimited fine;
  - imprisonment for a term not exceeding ten years;
  - an order for forfeiture; or
  - or a combination of any the above penalties.

Where a public official is convicted, the court also has powers to order that they be removed from their public office position, and prohibit those convicted from seeking public appointment for up to ten years.

Companies convicted of bribery offenses may face debarment from public procurement contracts under the EU Public Procurement Directive.

### 13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Deferred prosecution agreements, or similar settlement mechanisms, are not available under Irish law. The Law Reform Commission, in their 2018 Report on Regulatory Powers and Corporate Offences, recommended that that Deferred Prosecution Agreements, based on the UK model, be introduced. However, legislation has not yet been proposed to bring this into Irish law.

During a prosecution, cooperation with an investigating authority may be taken into account as a mitigating factor.

[Access the full guide](#)

[Return to Overview page](#)

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