

Corruption and Bribery Prevention Resources

- **US and UK laws**
- **Corruption and Bribery Prevention Policies**
- **Irish Legislation**

What Offers or Payments are Corrupt under the U.S. Foreign Corrupt Practices Act?

An offer or payment to an official

Made for the purpose of influencing any decision by the recipient in their official capacity

In an effort to secure or retain business or to improperly secure a business advantage

Associates may not make or authorise any such offer or payment on behalf of the Company either directly or indirectly through a contractor, agent or other third party.



Who are “officials”?

Officials may include:

Individuals acting in an official capacity for a foreign government, political party or a candidate for such an office

Representatives of government owned or operated enterprises such as hospitals, utility companies, financial institutions and universities

Provincial and city officials, political candidates, political party officials and employees, and employees of international organisations

What is a “Bribe” under the U.K. Bribery Act?

A bribery offense is committed where a person receives, offers or gives a bribe intending that in consequence a function should be performed “improperly”

Improperly means:

- The person performing it is expected to perform the function or activity in good faith, but does not,
- The person performing it is expected to perform it impartially, but does not or
- The person is in a position of trust, but breaches that trust.

A function may include:

- Functions of a public nature
- Activities connected with a business
- Activities performed in the course of a person’s employment, and
- An activity performed by or on behalf of a body of persons

Local custom or practice is to be disregarded unless it is *permitted or required by local written law.*

Are Giving Gifts and Offering Meals and Entertainment Allowed?

Permitted:

- Modest and customary gifts
- Courtesies such as reasonable business meals and entertainment in connection with normal business
- To the extent consistent with your Code of Business Conduct and Ethics and Client Entertainment policies.

Not permitted:

- Making a payment to induce someone to use your services
- Offering a bribe, kickback, gratuity or similar payment or loan to anyone, including agents of clients or their family members

Be Aware that government employees or officials are subject to strict rules and regulations governing acceptance of gifts. Before offering a gift in accordance with your own, make sure you are not putting your client in an awkward position by offering your client a gift they are not allowed to accept.

What are the Recordkeeping Requirements?

- Every transaction must have **proper authorisation and approval** in accordance with corporate policies and procedures, followed by **complete accounting and reporting** of the transaction.
- All transactions must be **properly recorded** with appropriate documentation reflecting the true nature of each payment.
- Every transaction is **subject to Internal Audit** verification.
- Any **exceptions** to the recordkeeping requirements **will be reported** to management and the Legal Department

No payment on behalf of the Firm shall be made if any part of that payment could be used for any other purpose than the one for which it was intended.

No false or fictitious entries will be allowed, and no employee shall engage in any transaction that would require a false entry.

No secret fund or asset may be created. If an associate knows of any such fund, he or she shall immediately report it to their office manager, regional manager, or to an attorney in the Legal Department.

What are the Penalties?

Violations of anti-corruption laws are criminal offences.

Any person who commits a violation of the FCPA or other law may be subject to fines, imprisonment or both.

Any employee who violates this policy will be subject to appropriate disciplinary action.

Your employer will co-operate with any governmental investigation of alleged violations of anti-corruption laws by any employee, contractor or agent.

YOU

Who is responsible for complying with this policy?

Every employee is responsible for complying with this policy.

Managers are responsible for ensuring awareness and compliance with this policy in the business units for which they are responsible

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 Organised Crime - entered into force on 17 July 2010.

Irish Legislation

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).

The Criminal Justice (Corruption Offences) Bill 2017

One of a series of measures identified by the Government to tackle white collar crime. Enactment was originally scheduled for end of 2018. The Bill will help Ireland to meet some of its commitments under international instruments and echoes the Planning Tribunal recommendations.

Most significantly for companies, the Bill provides that a body corporate may be held criminally liable where one of its employees/directors or agents (including a subsidiary) has engaged in corruption for business reasons.

The company may claim that it took 'all reasonable steps' and exercised 'all due diligence' to prevent them from doing so.

Companies operating in Ireland, and particularly those doing business in developing countries, may wish to put processes and procedures in place now to prepare for the new legislation.

The Criminal Justice (Corruption Offences) Bill 2017

The Bill will have immediate practical consequences for Irish companies and foreign companies doing business in Ireland.

They will need to put in place appropriate anti-corruption policies and procedures to prevent bribery and corruption in respect of how they get, keep and do business (including via agents and third parties), if they are to avoid criminal liability for corrupt acts by persons acting on their behalf.

I cannot direct you to the appropriate Irish guidance at this stage as to what might constitute 'all reasonable steps' or 'all due diligence'. However, one might reasonably assume that a broad range of matters will likely need to be addressed, from corporate hospitality and entertainment, to contractual arrangements with employees, agents and third parties. Start by assessing the specific bribery and corruption risks you face, by reference to what you do and where you do it and design policies and procedures to meet those needs.

Irish Legislation

However, Section 18 of the Irish Bill, which introduces the new corporate offence, is similar to Section 7 of the UK Bribery Act, 2010.

Therefore, the guidance published by the UK on 'adequate procedures' may help in understanding the new legislation. UK guidance suggests;

- a risk-based and proportionate approach to anti-bribery and corruption;
- the implementation of effective due diligence procedures;
- buy-in, communication and awareness at all levels of the organisation; and regular monitoring and review to ensure existing policies and procedures remain relevant and current.

You may wish to consider formal due diligence processes and warranties when appointing agents or other third parties and give some attention to the design and operation of procedures to monitor an agent's performance.

Irish Legislation

The Bill seeks to modernise Irish anti-bribery and corruption laws and replace them with a single Act, which will contain a number of new offences and increased penalties and sanctions.

New offences of 'active' and 'passive bribery' will be introduced.

It will be an offence to 'corruptly' offer or give (or accept or obtain) an inducement or reward for doing something in relation to an office or employment or position or business.

There will be a new offence of 'trading in influence' – the Bill will criminalise the promise of an undue advantage to someone who asserts he or she can exert an improper influence over a public official's decision making – whether or not the supposed influence leads to the intended result.

The use by an Irish official of 'confidential information' obtained as a result of their role to corruptly obtain a gift, consideration or advantage will also be criminalised.

Irish Legislation

It will be an offence to give a gift, consideration or advantage which it is known (or ought to be known) will be used to facilitate corruption.

There will be specific offences of 'corruptly' creating or using 'false documents', or threatening harm to a person, in order to induce or influence them to do something in relation to their office or employment or position or business.

Sentences of up to 10 years are provided for, as well as unlimited fines for conviction on indictment in respect of the main corruption offences in the Bill.

Public officials found guilty of a corruption offence may be removed from their public office or position.


A Court will have a discretion to prohibit convicted persons from seeking certain public appointments for up to ten years, although this will not include election to the Dail, Seanad, European Parliament or local authorities.

Enforcement

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

- Garda Bureau of Fraud Investigation;
- 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).



Questions?