

IRELAND

Little or no enforcement

1.9% of global exports

Investigations and cases

In the period 2016-2019, Ireland opened one investigation, commenced no cases and concluded no cases.

Recent developments

The Criminal Justice (Corruption Offences) Act 2018 (CJA 2018) came into operation on 30 July 2018¹ and was described by the OECD WGB in its Phase 1 Report on Ireland as “a significant milestone in Ireland’s fight against bribery and other forms of corruption”.² The CJA 2018 has extraterritorial effect for foreign corruption if it is proven that part of the relevant conduct took place in Ireland. Where all of the corruption took place outside Ireland, it can be prosecuted in Ireland if it was carried out by an Irish official, citizen or resident or an Irish company, and the corrupt act is also an offence in the place where it occurred.

The CJA 2018 also creates a corporate offence for the first time whereby a corporate body can be held liable for the corrupt acts of individuals, including directors, officers, employees, agents or subsidiaries, where the corruption is intended to obtain or retain business or an advantage for a company.³ When corruption offences are prosecuted, section 14 of the CJA 2018 provides for a presumption of corruption in respect of payments given to certain domestic and foreign officials, where it is proven that the person who gave a gift, consideration or advantage to the official had an interest in the exercise of the official’s functions (including the award of tenders or contracts), or the

official performed or omitted to perform a function to the benefit of the person who gave the gift, consideration or advantage. Individuals within a company (including directors, managers, secretaries and other officers) can be held liable in their personal capacities where it is proven that a corporate body has committed an offence with the consent or connivance of that individual, or one which was attributable to any wilful neglect by them. The CJA 2018 amends Irish money-laundering legislation, making foreign corruption a predicate offence for money-laundering where the offence occurs in a jurisdiction in which the corrupt act has not been criminalised. This means that it is now always an offence to launder the proceeds of foreign bribery in Ireland.⁴

Conviction for an offence under the CJA 2018 attracts a maximum penalty of 10 years’ imprisonment and an unlimited fine (save for the offence of trading in influence, which attracts a maximum penalty of up to five years’ imprisonment and an unlimited fine). Conviction for laundering the proceedings of such a corruption offence attracts maximum potential penalties of 14 years imprisonment or an unlimited fine (or both).⁵

Draft legislation to transpose the 5th EU Anti-Money Laundering Directive in time for the 10 January 2020 deadline was published in January 2019, but this has not been progressed due to the delay in forming a new government following the general election in February 2020. A government was formed on 27 June 2020 and is expected to progress this legislation. In May 2020, the European Commission sent a letter of formal notice to Ireland for having only partially transposed the 5th EU Directive.

Transparency of enforcement data

The numbers of complaints, investigations, files referred for prosecution or cases in which no prosecution is carried out are not published. The Minister for Justice and Equality acts as the central authority for mutual legal assistance (MLA)

¹ The CJA 2018 repealed the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906-2010.

² <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>

³ This also includes directors, managers, secretaries and officers of a company.

⁴ Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by section 26 of the CJA 2018.

⁵ Section 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, <http://www.irishstatutebook.ie/eli/2010/act/6/enacted/en/html>

requests.⁶ While the Department for Justice and Equality does not publish statistics on MLA requests made and received, statistics are available on request.

The Courts Service of Ireland publishes on its website all judgments made available by the Supreme Court, the Court of Appeal and the High Court. Criminal judgments delivered by the District or Circuit Courts at first instance are not published.⁷ Details of civil settlements and plea agreements with the Office of the Director of Public Prosecutions (DPP) are not published.

Beneficial ownership transparency

In accordance with the 4th EU Anti-Money Laundering Directive, Ireland established in 2019 a Register of Beneficial Ownership for bodies corporate (maintained by the Companies Registration Office). It is publicly accessible, but users must pay for access. “Relevant entities”, including companies, are required to establish and maintain an internal register of their beneficial owners, and to file information on their beneficial owners in the register.⁸ If, after having exhausted all possible avenues, the relevant entity is unable to identify its beneficial owners, details of the entity’s “senior managing officials” are entered in the internal beneficial ownership register and filed with the Register of Beneficial Ownership. A member of the public can access the name, month and year of birth, country of residence and nationality of each beneficial owner in the register, as well as a statement of the nature and extent of the interest held or control exercised by that beneficial owner in the relevant entity. Unrestricted access to the information in the register is afforded to certain ranks and grades in the national police force, the Financial Intelligence Unit, the Revenue Commissioners, the Criminal Assets Bureau and members of other competent authorities. Investment funds incorporated as companies must

submit details of their beneficial owners to the Register of Beneficial Ownership.

The Central Bank of Ireland is being appointed to establish and maintain a register of beneficial ownership for Irish collective asset-management vehicles, unit trusts and credit unions.⁹ In-scope entities already in existence have a six-month period from the introduction of the regulations (25 June 2020) to submit the required information.¹⁰

No central register on beneficial ownership of trusts (other than unit trusts) has been established yet,¹¹ nor has the legislation been passed to establish one, despite the requirements of the 4th EU Anti-Money Laundering Directive (although such legislation was expected in Q2 of 2020). However, trustees of express trusts are currently required to collate information on the beneficial owners of the trust and establish an internal register containing that information.¹² The information will ultimately be submitted to the central register on the beneficial ownership of trusts when it is established. The Revenue Commissioner is expected to be appointed to establish and maintain this register.

There have been indications that the beneficial ownership framework could be extended beyond what is required by the 4th EU Anti-Money Laundering Directive in respect of bodies corporate and trusts, to encompass other Irish structures, such as investment limited partnerships and common contractual funds (which are neither bodies corporate nor trusts). However, no framework or legislation for this has been published to date.

Inadequacies in legal framework

The OECD WGB’s Phase 1bis Report in 2019 recommended clarification of the criminal responsibility of “bodies corporate” under the CJA 2018, as corporate entities are provided with a defence where they can prove that they “took all

⁶ http://www.justice.ie/en/JELR/Pages/mutual_legal_assistance#_What_is_Mutual

⁷ Judgments delivered in subsequent appeals to the Court of Appeal or the Supreme Court are published.

⁸ This requirement was amended and updated by the 5th EU Anti-Money Laundering Directive; S.I. No. 110/2019, <http://www.irishstatutebook.ie/eli/2019/si/110/made/en/print?q=110&years=2019>

⁹ <http://www.irishstatutebook.ie/eli/2020/si/233/made/en/print>

¹⁰ The Central Bank of Ireland will provide additional guidance on its website and launch a submission portal. In-scope entities formed after the regulations were introduced will have six months from coming into existence to submit the required information.

¹¹ <https://rbo.gov.ie/faqs/registering-a-beneficial-owners/who-must-file-data-with-the-rbo.html>

¹² <http://www.irishstatutebook.ie/eli/2019/si/16/made/en/print?q=beneficial+ownership>

reasonable steps and exercised all due diligence to avoid commission of the offence".¹³ This defence has not yet been interpreted by the courts and there is no written guidance in this regard.¹⁴ The OECD's Phase 1 Report also refers to the fact that the "Identification Theory" doctrine for allocating criminal responsibility in the case of legal persons still exists in Irish common law.¹⁵ The Irish Law Reform Commission has recommended amending this doctrine to include a test that more accurately reflects the reality of modern corporate entities.¹⁶

It remains to be seen whether Ireland will be able to effectively apply its newly-harmonised regime under the CJA 2018 to foreign bribery cases, due to a requirement for proof of a corrupt intent, and the CJA 2018 not creating an autonomous offence of bribery of foreign public officials. Instead, the Act takes the approach that the offence criminalising bribery of "a person", "on account of any person doing an act in relation to his or her office, employment, position or business", is broad enough to encompass the bribery of foreign officials.

Inadequacies in enforcement system

The OECD expressed "serious concerns" in its Phase 3 Report in 2013 that Ireland had not prosecuted a foreign bribery case.¹⁷ This failure was further highlighted by the OECD WGB's Phase 3 Follow-Up Report published in November 2018.¹⁸ The OECD WGB has found that Ireland should improve its capacity and level of resources to detect, investigate and prosecute cases of foreign bribery, and this continues to be a significant inadequacy in the enforcement system. This concern was echoed in a February 2019 United Nations review of Ireland's implementation of the UN Convention against Corruption, which noted that the police Anti-Corruption Unit "has only three staff and its

corruption prevention mandate is not sufficiently clear". The review also recommended the setting up of an anti-corruption inter-agency steering committee to better coordinate corruption prevention efforts.¹⁹ However, there has been an increase in the investigation and prosecution of anti-money laundering offences, with the DPP directing money laundering charges against 129 individuals in 2019.

In an October 2018 report on Regulatory Powers and Corporate Offences, the Irish Law Reform Commission recommended the establishment of a statutory Corporate Crime Agency, as well as a dedicated prosecution unit for corporate offences in the DPP, in order to tackle corporate crime more effectively (which would include corruption offences).²⁰ Transparency International Ireland's "Submission on reform of Anti-Fraud/Anti-Corruption Structures" has made recommendations for new structures, including a National Anti-Corruption Bureau.²¹

There is no formal non-trial resolution process for criminal prosecution in Ireland. Pleas can be agreed, but the process is informal and the only publicly available information is the set of charges to which a plea has been entered.

Recommendations

- Publish separate statistics on all stages of foreign bribery enforcement, including the number of complaints investigated and sent to the DPP
- Make the central register of beneficial ownership information fully accessible to the public without a paywall
- Publish information from criminal courts of first instance, including about foreign bribery-related judgements and more generally, white-collar crime
- Amend or replace the "Identification Theory"

¹³ <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>

¹⁴ See recommendation 2(a), <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>

¹⁵ Under this doctrine, liability is attributed to a corporate body by requiring that the fault and conduct elements of the offence must be identified in a natural person who operates at a high level within its management structure.

¹⁶ https://www.lawreform.ie/_fileupload/Completed%20Projects/LRC%20119-2018%20Regulatory%20Powers%20and%20Corporate%20Offences%20Volume%202.pdf

¹⁷ <https://www.oecd.org/daf/anti-bribery/IrelandPhase3ReportEN.pdf>

¹⁸ <https://www.oecd.org/daf/anti-bribery/OECD-WGB-Enforcement-Data-2018-ENG.pdf>; <https://www.irishtimes.com/news/crime-and-law/irish-corruption-law-not-in-compliance-with-oecd-guidelines-1.3997012>

¹⁹ <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1900570e.pdf>

²⁰ <https://www.lawreform.ie/news/report-on-regulatory-powers-and-corporate-offences.839.html>

²¹ <https://transparency.ie/resources/submissions/reform-anti-fraud-corruption-structures>

doctrine for a test that more accurately reflects the reality of modern corporate entities • Increase clarity with respect to the criminal responsibility of “bodies corporate” under the CJA 2018, in particular, with respect to the defence available to corporate entities that they “took all reasonable steps and exercised all due diligence to avoid commission of the offence” • Enhance resources to ensure credible foreign bribery allegations are investigated and prosecuted, and structures reformed • Consider establishing a National Anti-Corruption Bureau and a multi-agency taskforce on corruption.