



IRELAND: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

February 2016

This report, submitted by Ireland, provides information on the progress made by Ireland in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on February 25 2016.

The Phase 3 report evaluated Ireland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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IRELAND: SUMMARY AND CONCLUSIONS ON PHASE 3 TWO-YEAR FOLLOW-UP REPORT

a) Summary of Findings

1. Since Ireland's Phase 3 review in December 2013, Ireland has made significant progress on improving the legal regime for protecting whistleblowers who report suspicions of the bribery of foreign public officials. Ireland has also made important efforts to raise the awareness of the private sector about the Anti-Bribery Convention and the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance. However, despite taking preliminary steps to address weaknesses in its laws for criminalising the bribery of foreign public officials and corporate liability for such bribery, legislation for this purpose has still not been adopted. Moreover, Ireland still needs to take urgent steps to ensure it has the capacity and resources to detect, investigate and prosecute cases of foreign bribery.

2. Beginning with Ireland's Phase 2 review in 2007, the Working Group on Bribery (WGB) recommended to Ireland that it consolidate and harmonise its two foreign bribery offences in a manner that is in compliance with the Convention. The offence under the Criminal Justice (Theft and Fraud) Offences Act (CJOA) addresses the bribery of officials of the European Communities and any official of a Member State of the European Communities; whereas the offence under the Prevention of Corruption Act (POCA) addresses the bribery of foreign public officials generally, including officials covered by the CJOA. The two offences are not entirely consistent, and the sanctions for the offence under the POCA are more severe. The Draft Scheme for the Criminal Justice (Corruption) Bill published in 2012 ("the 2012 Draft Scheme") addressed issues identified by the WGB concerning the application of the offence under the POCA to bribery of foreign public officials. However, it was not taken forward as the basis for new legislation, and, in any case, did not address the WGB's recommendation on consolidation and harmonisation. The Irish government is currently working on a draft Criminal Justice (Corruption) Bill ("the draft Bill") to be taken before Ireland's legislature in due course. The draft Bill has not yet been published and it remains unclear to what extent its provisions, if enacted, would meet the WGB's recommendations.

3. The WGB's recommendation dating back to Phase 2 to review on a high priority basis the law on corporate liability for bribery of foreign public officials with a view to codification was also addressed as part of the 2012 Draft Scheme. The language of the 2012 Draft Scheme might satisfy the standards in the OECD Good Practice Guidance on Implementing Specific Articles of the Convention, but even if incorporated in the draft Bill and subsequently enacted by Ireland's legislature, the provision would not apply to the bribery of officials of the European Communities and any official of a Member State of the European Communities under the CJOA. Ireland has also not yet addressed the longstanding recommendation to amend its law so that laundering the proceeds of bribery of foreign public officials in Ireland is an offence even if the foreign bribery offence ("predicate offence") takes place abroad.

4. The WGB's recommendations to Ireland to urgently organise its law enforcement resources and consider applying simple cost-effective detection and investigation steps in cases of bribery of foreign public official have also not yet been implemented. Although training activities have been conducted, and basic Internet tools are now being used to identify potential cases, Ireland needs to take more substantial steps to enhance its capacity to deal with international cases of bribery of foreign public officials.

5. Ireland has made significant progress on private sector awareness, including initiatives led by the Department of Jobs, Enterprise and Innovation; the State agency responsible for promoting the growth of export markets for Irish owned firms; and the Department of Foreign Affairs and Trade. Furthermore, Ireland has made notable progress on ensuring effective whistleblower protections, by adopting the

Protected Disclosures Act 2014, which provides a single comprehensive regime for whistleblowers in the public and private sectors. Once published, guidance intended to raise awareness of this law in the public and private sectors may enhance law enforcement capabilities for detecting foreign bribery.

b) Conclusions

6. The WGB concludes that out of 27 recommendations, Ireland has fully implemented recommendations 7(a), 7(b), 7(c), 7(d), 7(e), 8(a), 8(b), 8(c), 9(a), 9(b), 9(c), and 9(e); partly implemented recommendations 1(b), 2(a), 6(b), and 9(d); and not implemented recommendations 1(a), 2(b), 3(a), 3(b), 5(a), 5(b), 6(a), 6(c), 10(a), and 10(b). Recommendation 4 to take proactive and concrete steps to establish a territorial link in credible allegations of bribery of foreign public officials cannot be adequately assessed at this stage. Ireland is therefore invited to report back in writing in six months (June 2016) on progress as regards investigations into cases of suspected bribery of foreign public officials, including implementation of recommendation 4, and steps being taken to implement the following partly and unimplemented recommendations: 1(a), 2(a), 5(a), 5(b), 6(a) and 9(d).

7. Additionally, the Working Group on Bribery will send a letter to the following senior officials of the Irish government to bring to their attention long-standing key recommendations on the legal and enforcement framework for combating foreign bribery that have still not been fully implemented [1(a), 2(a), 5(a), 5(b), and 6(a)]: the Minister of Justice and Equality; the Commissioner of An Garda Síochána (the police force of Ireland); and the Director of Public Prosecutions.

PHASE 3 EVALUATION OF IRELAND: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [[DAF/INV/BR\(2008\)25/FINAL](#), paragraphs 55-67].

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

*Please submit completed answers to the Secretariat on or before **10 November 2015**.*

Name of country: Ireland
Date of approval of Phase 3 evaluation report: 13 December 2013
Date of information: 25 November 2015

PART I: RECOMMENDATIONS FOR ACTION

Description of cases - SEE ANNEX 1 FOR UPDATE ON CURRENT MATRIX CASES

Please provide information about foreign bribery enforcement as follows:

- ongoing investigations regarding foreign bribery and related offences of money laundering and accounting fraud*
- terminated investigations regarding foreign bribery and related offences of money laundering and accounting fraud*
- ongoing prosecutions of foreign bribery and related offences of money laundering and accounting fraud*
- convictions and acquittals of foreign bribery and related offences of money laundering and accounting fraud*

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation 1:

1. Regarding Ireland's offences of bribing a foreign public official in POCA 2010 and CJOA 2001, the Working Group recommends that Ireland:

(a) As previously recommended in Phase 2, consolidate and harmonise the foreign bribery offences in the two statutes in a manner that is in compliance with Article 1 of the Anti-Bribery Convention, without further delay, including by removing reference to the term "agent" in POCA 2010 (Convention, Article 1); and

Action taken as of the date of the follow-up report to implement this recommendation:

Due to a demanding programme of legislative reform, it has not been possible to finalise and publish the Criminal Justice (Corruption) Bill within the original timeframes envisaged. The Bill is on the 'A' list of the Government legislation programme i.e. legislation which is expected to be published before the next parliamentary session in January 2016.

Head 2 of the Scheme of the Criminal Justice (Corruption) Bill, deals with Active and Passive Corruption provisions which will replace the offences in Section 1 of the 1889 Act and section 1 of the 1906 Act. The use of the terms agent/principal will not be applied.

Head 5 of the Scheme deals with provisions in relation to the Bribery of a Foreign Public Official which will replace that part of section 1 of the 1906 Act which included different classes of foreign public officials in the definition of agent. The term "foreign public official" is defined in Head 1 Interpretation. The Bill will not contain any references to the term "agent".

With regard to the use of the term "corruptly" the General Scheme proposes that this term will be maintained in the forthcoming Bill, albeit with a revised definition. The recommendation of the Working Group remains under consideration and is being reflected upon in the drafting of the Criminal Justice (Corruption) Bill.

With regard to the Amendment of the Criminal Justice (Theft and Fraud) Offences Act 2001, a proposed EU Directive on protecting the financial interests of the EU is currently under discussion with the EU Parliament. When the negotiations are concluded and a new Directive is agreed, Part 6 of the 2001 Act will be subject to comprehensive review.

It would be premature to make any legislative changes to the domestic legislation dealing with this issue in advance of agreement on this instrument at EU level.

If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. Regarding Ireland's offences of bribing a foreign public official in POCA 2010 and CJOA 2001, the Working Group recommends that Ireland:

(b) Consider making the definition in POCA 2010, which is meant to describe a person performing a public function for a foreign public enterprise, completely autonomous, without need to refer to the definition of "person" in the Interpretation Act (Convention, Article 1).

Action taken as of the date of the follow-up report to implement this recommendation:

In the context of work on the drafting of the Criminal Justice (Corruption) Bill, this definition is being reviewed. However, as noted in the Phase 3 report, the Interpretation Act 2005 sets the rules for statutory interpretation for all Irish legislation. The application of such principles are not therefore unique to an interpretation of corruption legislation. Ireland is satisfied that the current provisions meet the requirements of Article 1.4(a) of the Convention. Ireland continues to monitor this definition as practice develops.

If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Ireland:

(a) Review on a high priority basis, the law on the liability of legal persons for foreign bribery with a view to codifying it, and to expand the scope of the liability to cover bribery committed by a lower level person with the express or implied permission of a senior person, as previously recommended in Phase 2 and Phase 2bis, and further expand the liability to meet the standards in the Good Practice Guidance in Annex I of the 2009 Anti-Bribery Recommendation (Convention, Article 2; 2009 Recommendation Annex I.B); and

Action taken as of the date of the follow-up report to implement this recommendation:

In the context of work on the drafting of the Criminal Justice (Corruption) Bill, this matter remains under consideration.

Head 13 of the Scheme of the Criminal Justice (Corruption) Bill provides that:

- If an offence is committed by a director, manager, secretary, officer, employee, subsidiary or agent of a body corporate with the intention of obtaining or retaining business for the body corporate or to

obtain or retain an advantage in the conduct of business for the body corporate, that body corporate is also guilty of the offence

- If an offence is committed by a body corporate and the offence was committed with the consent, connivance, was attributable to any wilful neglect by a director, manager, secretary or other officer that person as well as the body corporate is also guilty of the offence.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Ireland:

(b) Expressly provide for the liability of unincorporated legal persons for foreign bribery as recommended in Phase 2. (Convention, Article 2)

Action taken as of the date of the follow-up report to implement this recommendation:

In the context of work on the drafting of the Criminal Justice (Corruption) Bill, this recommendation remains under consideration.

Head 13 of the Scheme of the Criminal Justice (Corruption) Bill explicitly provides for the application of liability of unincorporated bodies.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(a):

3. Regarding sanctions for foreign bribery, the Working Group recommends that Ireland:

(a) Ensure that legal persons are subject to effective, proportionate and dissuasive criminal sanctions, as previously recommended in Phase 2 (Convention, Article 3); and

Action taken as of the date of the follow-up report to implement this recommendation:

Under existing corruption legislation, the penalties which may be imposed on conviction on indictment are an unlimited fine and/or imprisonment for a term up to 10 years.

As noted above, Ireland has had no convictions for the foreign bribery offence to date.

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. Regarding sanctions for foreign bribery, the Working Group recommends that Ireland:

(b) Consider the imposition of exclusion from tendering for awards of public contracts upon conviction of foreign bribery, regardless if the person bribed is an official from a Member State of the European Union, as previously recommended in Phase 2. (Convention, Article 3.4; 2009 Recommendation XI)

Action taken as of the date of the follow-up report to implement this recommendation:

Currently, all tenderers for public contracts must complete a statutory declaration that they have not been convicted of any of the offences referred to in S.I. No. 329/2006, including corruption as defined in EU law.

The Office of Government Procurement which was established in 2014, has issued a suite of standard procurement documents for use by all public bodies

The recently revised EU Directive on Public Procurement expands the grounds for exclusion to include corruption "as defined in the national law". The new Directive will be in place by April 2016.

Public officials are required to maintain the highest standards of probity in the performance of their duties and to comply with codes of standards and behaviour that apply in respect of them. Statutory codes of conduct have been developed across the public sector including the [civil service \(here\)](#), the [local authority sector \(here\)](#), and the HSE sector [\(here\)](#). Likewise State bodies are required to comply with the Code of Practice for the Governance of State Bodies [\(here\)](#) (which includes a framework Code of Conduct in Appendix II) and they will have developed their own codes of standards and behaviour.

The Public Procurement Guidelines – Competitive Process (2010) make contracting authorities responsible for guarding against corrupt or collusive practices. It states that "*To safeguard against improper or unethical practices contracting authorities must also take measures to separate functions within the procurement cycle, by ensuring that, for example, ordering and receiving of goods and services are distinct from payment for services.*" Additionally, the Guidelines state: "*Contracting authorities should be aware of potential conflicts of interest in the tendering process and should take appropriate action to avoid them.*"

Public officials should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of public officials should be above suspicion and their dealings with commercial and other interests should bear the closest possible

scrutiny. The offering of a bribe and the acceptance of a bribe are both treated as offences under the Prevention of Corruption Acts 1889 to 2010. The provisions apply to persons in the public and private sectors. Corruptly accepting or attempting to obtain any gift consideration or advantage as an inducement to, or reward for, doing any act or making any omission in relation to one's office or position is an offence. Corruptly giving, or offering such a bribe is also an offence.

See also additional note on the Public Sector Standards Bill at Annex 2.

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4:

4. The Working Group recommends that Ireland as a matter of priority, take proactive and concrete steps to determine whether it is possible to establish a territorial link in credible allegations of foreign bribery by Irish companies and individuals, including in cases where an MLA request or request through Interpol has been sent and Ireland is waiting for a response (Convention, Article 4; 2009 Recommendation XIII).

Action taken as of the date of the follow-up report to implement this recommendation:

Ireland has four cases on the Matrix. An Garda Síochána continues to investigate one case of alleged Foreign Bribery. In the remaining three cases, international cooperation efforts have not elicited any evidence of a credible allegation with a territorial link to Ireland. Ireland is of the view that these 3 cases should now be closed.

See update on cases at Annex 1.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

5. Concerning enforcement of the foreign bribery offences, the Working Group recommends that Ireland:

(a) Urgently reorganise law enforcement resources in such manner that credible allegations of foreign bribery will be investigated and prosecuted in a timely and effective manner (Convention, Article 5; 2009 Recommendation IV, V and Annex I.D); and

Action taken as of the date of the follow-up report to implement this recommendation:

Against a background whereby no recruitment to An Garda Síochána took place during the period 2009-2014 and garda personnel numbers reduced by approx 2000, a greater emphasis has been placed on providing training to as many officers as possible outside of the Garda Bureau of Fraud Investigation in respect of investigating foreign bribery, money laundering and false accounting and other related offences.

In the period 2014-2015, an additional one hundred and thirty five officers have been trained to conduct investigations of this type, having completed a three week 3rd level accredited course.

To dovetail with completion of the fraud training, a national conference for trained fraud investigators which was due to be held in late 2015 has been postponed till March 2016.

The organisation of law enforcement resources and recruitment of new staff to GBFI in will be kept under review having regard to garda personnel numbers and an ongoing recruitment campaign which began in 2014.

If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(b):

5. Concerning enforcement of the foreign bribery offences, the Working Group recommends that Ireland:

(b) Consider how to apply cost effective and simple detection and investigative steps at the earliest opportunity (Convention, Article 5; 2009 Recommendation IV, V and Annex I.D).

Action taken as of the date of the follow-up report to implement this recommendation:

In respect of seeking simple and cost effective detection and investigative steps, An Garda Síochána has utilised free tools readily available on the World Wide Web in an effort to proactively identify cases of foreign bribery and corruption reported through the media.

If no action has been taken to implement recommendation 5(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(a):

6. Concerning anti-money laundering (AML) measures and foreign bribery, the Working Group recommends that Ireland:

(a) Amend the dual criminality exception for the money laundering offence in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred, as previously recommended in Phase 2 in relation to the Criminal Justice Act 1994 (Convention, Article 7; Commentary 28);

Action taken as of the date of the follow-up report to implement this recommendation:

This issue is being considered in the context of the Criminal Justice (Corruption) Bill. The application of this provision is being considered at present by the Irish legal authorities.

If no action has been taken to implement recommendation 6(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(b):

6. Concerning anti-money laundering (AML) measures and foreign bribery, the Working Group recommends that Ireland:

(b) Maintain more detailed statistics on: i) sanctions in money laundering cases, including the size of fines and forfeited assets; ii) whether foreign bribery is a predicate offence in suspicious transaction reports (STRs); and iii) the number of STRs that result in or support bribery investigations and prosecutions (Convention, Article 7); and

Action taken as of the date of the follow-up report to implement this recommendation:

(i)

The Financial Intelligence Unit (FIU) of An Garda Síochána maintains statistics in relation to all money laundering charges preferred in this jurisdiction. The information recorded includes details of the person charged, the wording of the charge, the location of the trial and details of fine/custodial sentences imposed on conviction.

In addition the annual Anti Money Laundering Report makes publically available certain statistical information.

(ii)

Foreign bribery is deemed to be a predicate offence of money laundering in this jurisdiction. This is provided for in Section 6 (b) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

To date, there have been no STRs identified where foreign bribery was indicated as the possible predicate offence.

(iii)

The Financial Intelligence Unit maintain details of STRs that result in or support bribery investigations or prosecutions. The FIU are in an advanced stage of obtaining a new computer system to record details of STRs. The ability to produce statistics in relation to STRs that support bribery/corruption and other high profile crime investigations will be greatly enhanced once this system has been activated.

If no action has been taken to implement recommendation 6(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(c):

6. Concerning anti-money laundering (AML) measures and foreign bribery, the Working Group recommends that Ireland:

(c) In the review of Ireland's AML/CFT System, the Money Laundering Steering Committee specifically look at how the AML system can be strengthened for the purpose of detecting foreign bribery and supporting foreign bribery investigations and prosecutions, and facilitate the effective detection, investigation and prosecution of money laundering cases where foreign bribery is the predicate offence (Convention, Article 7).

Existing domestic law to transpose the 3rd EU Anti Money Laundering Directive has strengthened our national response to risks of foreign bribery and corruption through measures designed to deal with Politically Exposed Persons and customer due diligence requirements

The Department of Finance chairs the Steering Committee (SC) referred to. Its membership includes the Revenue Commissioners, the Criminal Assets Bureau, the Garda Bureau of Fraud Investigation, the Director of Public Prosecutions, the Department of Justice and Equality and the Central Bank of Ireland.

The SC is currently conducting a National Risk Assessment (NRA) in Money Laundering and Terrorist Financing. Part of this process will examine the predicate offences which result in Money Laundering and Ireland's international connections in regard to Money Laundering and Terrorist Financing. The issues of detecting foreign bribery and supporting of foreign bribery investigation and prosecutions will be part of this work.

If no action has been taken to implement recommendation 6(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 7(a):

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance as they relate to foreign bribery, the Working Group recommends that Ireland:

(a) Ensure that false accounting offences are sanctioned in an effective, proportionate, and dissuasive manner, as previously recommended in Phase 2, and also: i) increase the penalties for false accounting, as suggested in the current draft of the Companies Bill 2012, and ii) raise the awareness of, and provide training to, AGS investigators on the detection and investigation of fraudulent accounting offences related to foreign bribery in the CJOA 2001 (Convention, Article 8; 2009 Recommendation III.i);

Action taken as of the date of the follow-up report to implement this recommendation:

7.(a) i)

Under section 10 of the Criminal Justice (Theft and Fraud Offences) Act 2001, the intentional falsification of books and records is subject to an unlimited fine and/or imprisonment for a term not exceeding 10 years.

In addition, Irish company law has offences in relation to falsification of company books and documents. The Companies Bill referred to above was enacted as the Companies Act 2014 and commenced on 1 June 2015. The Act increases the penalties in relation to false accounting offences.

Section 871 of the Act sets out the four-fold categorisation of offences as follows:

871 (1) A person guilty of an offence under this Act that is stated to be a category 1 offence shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or

(b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both.

(2) A person guilty of an offence under this Act that is stated to be a category 2 offence shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both; or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person guilty of an offence under this Act that is stated to be a category 3 offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.

(4) A person guilty of an offence under this Act that is stated to be a category 4 offence shall be liable, on summary conviction, to a class A fine.

Additionally there are offences in the Act for providing false information and the falsification of books and documents:

Section 876 of the Act makes it an offence to provide false information. While it is made a Category 2 offence in general, the penalties for a Category 1 offence apply in certain circumstances.

Under this section it is a category 2 offence where a person, in purported compliance with this Act, answers a question, provides an explanation, makes a statement or completes, signs, produces, lodges or delivers any return, report, certificate, balance sheet or other document that is false in a material particular and knows that it is false in a material particular or is reckless as to whether the information is false or not. Subsection (3) provides for greater maximum penalties in certain cases where the conviction is on indictment and the commission of the offence has substantially contributed to the company being unable to pay its debts, or impeded the winding up of the company or facilitated the defrauding of creditors.

Section 877 provides for a category 2 offence for the destruction, mutilation or falsification of a book or document affecting or relating to the property or affairs of the company.

Section 878 makes it an offence to fraudulently part with, alter or make an omission in any book or document affecting or relating to the property or affairs of the company. This is a category 2 offence.

7 (a) ii)

As mentioned in the response to 5 (a), training has been provided within An Garda Síochána in respect of investigating foreign bribery, money laundering and false accounting and other related offences.

The Office of the Director of Public Prosecution is aware of the importance of providing a high standard of training to its prosecutors and raising awareness not only in relation to financial crime in general, but

also to Ireland's obligations under international conventions. This importance is not considered to be confined solely to those directly engaged in prosecuting those crimes, and ethical and professional training on an annual basis is mandatory for all prosecutors employed in the ODPP. The OECD Convention and related issues has formed part of that training before and indeed since the report.

If no action has been taken to implement recommendation 7(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance as they relate to foreign bribery, the Working Group recommends that Ireland:

(b) Raise awareness of the accounting and auditing profession of the foreign bribery offence, as previously recommended in Phase 2 (Convention, Article 8; 2009 Recommendation III.i,III.v, and X);

Action taken as of the date of the follow-up report to implement this recommendation:

The prescribed accountancy bodies are aware of this recommendation and consider that the Convention falls within the interpretation of reportable offences under existing anti money laundering legislation. Reference to the Convention has been included in the current guidance in issue by the Chartered Accountants Ireland Consultative Committee of Accountancy Bodies.

Additionally the Irish Auditing and Accounting Supervisory Authority (IAASA) the statutory body that oversees how the accountancy bodies in Ireland regulate and monitor their members, have distributed information pertaining to the offence of foreign bribery to the nine prescribed accountancy bodies under their remit. Therefore this information reached over 24,000 members and over 17,500 students of the accounting and auditing profession.

If no action has been taken to implement recommendation 7(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(c):

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance as they relate to foreign bribery, the Working Group recommends that Ireland:

(c) Require external auditors to report all suspicions of foreign bribery to management and, as appropriate,

to corporate monitoring bodies, regardless if the suspected bribery would have a material impact on financial statements, as previously recommended in Phase 2 (Convention, Article 8; 2009 Recommendation X.B);

Action taken as of the date of the follow-up report to implement this recommendation:

As noted in the Phase 3 Report, Ireland has in place a number of provisions which impose reporting obligations on Auditors including the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, the Criminal Justice Act 2011 and the Criminal Justice (Theft and Fraud Offences) Act 2001.

In addition to reporting requirements under these provisions, statutory auditors are required under section 393 of the Companies Act, 2014 (commenced on 1 June 2015), to report to the Director of Corporate Enforcement, where, in the course of carrying out an audit, information comes into their possession that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer has committed a category 1 or 2 offence under the Companies Act 2014.

Additionally under section 931(4) of the Companies Act, 2014, a disciplinary committee of a body of a recognised body of accountants, i.e. a body which is permitted to authorise its members and/or member firms to perform audits under the Companies Acts, is required to report to the Director of Corporate Enforcement if it has reasonable grounds for believing that category 1 or 2 offence under the Companies Act 2014 may have been committed by a person while the person was a member of the body.

Category 1 and category 2 offences as referred to above are described at section 871 of the Companies Act 2014. When prosecuted summarily category 1 and category 2 offences attract a class A fine (currently set at €5,000 by the Fines Act 2010) or imprisonment of up to 12 months or both. When prosecuted on indictment a category 1 offence will have a penalty of a fine of not more than €500,000 or up to 10 years in prison or both and a category 2 offence will attract a fine of not more than €50,000 or a prison term not exceeding 5 years or both.

If no action has been taken to implement recommendation 7(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(d):

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance as they relate to foreign bribery, the Working Group recommends that Ireland:

(d) Consider clarifying any inconsistencies between the S.I. No. 220/2010 and the Companies Bill 2012 (before it enters into force) concerning required internal company controls (Convention, Article 8; 2009 Recommendation X.A); and

Action taken as of the date of the follow-up report to implement this recommendation:

The above recommendation has been addressed in the Companies Act 2014.

Section 167 of the Companies Act 2014 requires the boards of directors of large private companies to decide whether or not to establish an audit committee. A large company is a company whose balance sheet total exceeds €25 million and whose amount of turnover exceeds €50 million in both the most recent financial year and the immediately preceding financial year, or if the company and all of its subsidiary undertakings together meet the above balance sheet and turnover criteria.

The board of directors of a large company must state, in the directors' report required under section 325 of the Act, whether the company has established an audit committee or, if the company has decided not to establish such a committee, the reasons for that decision. At least one independent director must sit on the committee and must have competence in accounting or auditing, or, where there is more than one independent director, at least one of them must have such competence. The responsibilities of the audit committee are set out in subsection (7) of section 167 and include:

- the monitoring of the financial reporting process;
- the monitoring of the effectiveness of the company's systems of internal control, internal audit and risk management;
- the monitoring of the statutory audit of the company's statutory financial statements; and
- the review and monitoring of the independence of the statutory auditors and in particular the provision of additional services to the company.

Where a director of a large company fails to take all reasonable steps to comply with the requirement to state in the directors' report whether the company has established an audit committee, or the reasons for the decision not to establish such a committee, the director shall be guilty of a category 3 offence. A category 3 offence on conviction may give rise to a prison sentence of up to 6 months imprisonment or a Class A fine (currently set at a maximum €5,000 by the Fines Act 2010), or both.

Section 1097 of the Companies Act 2014 derives from the provisions of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010) and applies section 167 of the Act to a public limited company ('PLC') that is not a public interest entity. The effect of this is that all PLCs that are not public interest entities will be equated with a large private company as regards section 167 and its operation, meaning that all PLCs that are not public interest entities will have to decide whether to establish an audit committee.

Section 1442 of the Companies Act 2014 facilitates the exemption of a specific category of captive insurers and re-insurers (of insurance/reinsurance companies) from the obligation under Article 41 of the Statutory Audits Directive (2006/43/EC) to have an audit committee. Captive insurance is considered to be inherently an exercise in self-insurance by a corporation and as such the inherent risk profile of most captive insurers is significantly different from other insurers, thereby removing the need for an audit committee. An obligation on such an entity to have an audit committee is not considered to serve any real purpose, and thus places an undue and significant demand on these undertakings. Article 39 of the Statutory Audits Directive (2006/43/EC) provides that Member States may exempt public-interest entities which have not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC from the requirement to have an Audit Committee. Article 39 of the Statutory Audits Directive (2006/43/EC) was not given effect in Ireland's main transposing instrument the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010) because it is a Member State option and, therefore, requires primary legislation in order to be exercised. The section meets the criteria at Article 39 of Directive 2006/43/EC

that the public interest entities in question cannot have issued transferable securities admitted to trading on a regulated market to avail of the exemption from the requirements to have an audit committee in respect of captive insurers and re-insurers (within the meaning of Article 13 of Directive 2009/138/EC, but excluding captives owned by a credit institution or group of credit institutions).

If no action has been taken to implement recommendation 7(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(e):

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance as they relate to foreign bribery, the Working Group recommends that Ireland:

(e) Raise awareness in the private sector of the OECD Anti-Bribery Convention and the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (2009 Recommendation X.C.i).

Action taken as of the date of the follow-up report to implement this recommendation:

Ireland has an anti corruption website which contains details in relation to the OECD Anti Bribery Convention and provides contact details for reporting suspicions or documentary proof that corrupt practices are taking place in international business transactions. As mentioned above, the Irish Auditing and Accounting Supervisory Authority (IAASA), has distributed information pertaining to the offence of foreign bribery to the prescribed accountancy bodies under their remit.

The Department of Jobs, Enterprise and Innovation have a guide to the OECD Anti-Bribery Conventions and to relevant Irish legislation available on their website. The guide has also been distributed to raise awareness of agencies, organisations and companies doing business abroad.

The State agency with responsibility for promoting the growth of export markets for Irish owned firms regularly informs their clients of the importance and relevance of anti-corruption / bribery practices and governance. Information is provided to companies in advance of their taking part in trade missions abroad which are organised by the agency.

The Department of Foreign Affairs and Trade explicitly requests officers located abroad, to be pro-active in bringing to the attention of the business community the provisions of the Convention and of relevant legislation

If no action has been taken to implement recommendation 7(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(a):

8. Regarding the detection of foreign bribery through tax measures, the Working Group recommends that Ireland:

(a) Continue to provide ongoing training for the Revenue Commissioners on the detection of foreign bribery through tax information (2009 Recommendation III and VIII; 2009 Tax Recommendation II);

Action taken as of the date of the follow-up report to implement this recommendation:

The Office of the Revenue Commissioners continues to provide training on the detection of foreign bribery through tax information on an ongoing basis. This training is included as part of Revenue's Audit Training Programme for tax auditors.

If no action has been taken to implement recommendation 8(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. Regarding the detection of foreign bribery through tax measures, the Working Group recommends that Ireland:

(b) Provide training to members of AGS to encourage them to contact the Revenue Commissioners if they have relevant tax information when investigating foreign bribery cases, where appropriate (2009 Recommendation III and VIII; 2009 Tax Recommendation II); and

Action taken as of the date of the follow-up report to implement this recommendation:

An Garda Síochána encourage close cooperation with the Revenue Commissioners and provide training in this regard. An example of this close cooperation is that a revenue official completed the fraud investigation course recently conducted by the Garda Bureau of Fraud Investigation.

See also response at 5 a.

If no action has been taken to implement recommendation 8(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(c):

8. Regarding the detection of foreign bribery through tax measures, the Working Group recommends that Ireland:

(c) Consider including the language in Article 26 paragraph 2 of the OECD Model Tax Convention in its bilateral treaties (2009 Recommendation VIII; 2009 Tax Recommendation I.iii).

Action taken as of the date of the follow-up report to implement this recommendation:

Ireland is prepared to include Article 26 paragraph 2 of the OECD Model Tax Convention in its bilateral treaties, subject to the agreement of the treaty partner. The new language is part of Ireland's model treaty used in negotiations. It is contained in Ireland's Double Taxation Agreement with Germany (2011) and also in some treaties that are currently under negotiation.

If no action has been taken to implement recommendation 8(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. Concerning awareness and reporting foreign bribery, the Working Group recommends that Ireland:

(a) Increase the awareness of public agencies that interact with companies operating abroad and to improve awareness of Ireland's foreign bribery offence among companies, in particular small- to medium-sized enterprises active in foreign markets, as previously recommended in Phase 2 (2009 Recommendation III);

Action taken as of the date of the follow-up report to implement this recommendation:

In 2014, an updated guide to the OECD Anti-Bribery Conventions and to relevant Irish legislation was published on the website of the Department of Jobs Enterprise and Innovation and distributed to raise awareness of agencies, organisations and companies doing business abroad. The guide includes information on the protections in Irish legislation for whistleblowers reporting suspected corruption offences and provides contact information for the Bureau of Fraud Investigation, if there is a suspicion of

corrupt practices in international business transactions.

This guide states that Irish businesses, both at home and abroad, should implement anticorruption policies and practices, including anti-corruption guidelines, training, internal audit procedures and reporting requirements. The guide outlines the need for business to maintain, review and develop measures to respond to changing circumstances. It also outlined specific measures which a business could implement such as:

- ensuring that all employees are familiar with the relevant bribery and corruption laws, their responsibilities and the appropriate response to any suspicion of corrupt activity;
- ensuring that agents and partners, who are representing or purporting to represent their business, have adequate and valid credentials for the activities being undertaken
- establishing monitoring and reporting requirements for agents and partners representing their business.
- establishing a clear and accessible internal system for the reporting of any suspicious behaviour in relation to the OECD Anti-Bribery Convention.

In addition, the State agency which is responsible for promoting the growth of export markets for Irish owned firms regularly informs their clients of the importance and relevance of anti-corruption / bribery practices and governance. Information is provided to companies in advance of their taking part in trade missions abroad which are organised by the agency.

Staff of the Department of Foreign Affairs and Trade (DFAT), including staff located abroad, have been made aware of the Convention and the relevant legislation in Ireland through relevant circulars, viz. A.O. Circular 09/07, which draws attention to the Convention, and A.O. Circular 03/13, which contains reporting guidelines for staff of the Department of Foreign Affairs and Trade. A.O Circular 03/13 explicitly requests officers to be pro-active in bringing to the attention of the business community the provisions of the Convention and of relevant legislation.

Since July 2014, details of the Convention and relevant legislation have also been included in a booklet, 'Promotional Guidelines for the Embassy Network', produced by the Trade Division of DFAT and targeted at staff located abroad. Training on the Convention is also held annually for the benefit of staff taking up duty abroad, and Irish Aid, which is managed by the Development Co-operation Division of DFAT, has conducted separate anti-corruption training for its staff, which has included Convention-specific training. In addition, it is the policy and practice of DFAT's Trade Division to include the aforementioned reporting guidelines in all briefing packs for DFAT Ministers and accompanying officials participating in trade missions.

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. Concerning awareness and reporting foreign bribery, the Working Group recommends that Ireland:

(b) Establish procedures for public sector employees, including employees of DFAT and trade promotion and development aid agencies, to encourage and facilitate the reporting of suspected foreign bribery offences that they may uncover in the course of their work, as previously recommended in Phase 2 (2009 Recommendation IX.i-ii);

Action taken as of the date of the follow-up report to implement this recommendation:

As regards employees of the Department of Foreign Affairs and Trade (DFAT) (including Irish Aid, which is managed by the Development Co-operation Division of DFAT), and as already indicated in respect of recommendation 9(a), A.O. Circular 03/13 contains reporting guidelines for staff of DFAT. The Circular makes it a requirement for all staff of the Department to report immediately any information that they may become aware of regarding suspected acts of bribery by Irish nationals, residents, companies or other incorporated bodies. It sets out the procedures for reporting, including contact points in DFAT and the Garda Síochána.

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(c):

9. Concerning awareness and reporting foreign bribery, the Working Group recommends that Ireland:

(c) Consider maintaining statistics on the number of reports that are made by DFAT employees under the DFAT reporting guidelines and of the reports filed with AGS by both public and private sector employees pursuant to section 19 of the Criminal Justice Act 2011 (2009 Recommendation IX.i-ii);

Action taken as of the date of the follow-up report to implement this recommendation:

Efforts have been made to maintain statistics on the number of foreign bribery reports made under these reporting mechanisms.

To date in 2015, 61 Section 19 reports have been received at the Garda Bureau of Fraud Investigation. None of these reports relate to the foreign bribery offence.

In addition, the Corporate Services Division of the Department of Foreign Affairs and Trade has made provision for statistics to be maintained on the number of reports that are made by their employees.

If no action has been taken to implement recommendation 9(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(d):

9. Concerning awareness and reporting foreign bribery, the Working Group recommends that Ireland:

(d) Raise greater awareness in the public and private sectors of available channels for reporting suspected cases of foreign bribery, and raise greater awareness of whistleblower protections in legislation, once the Protected Disclosure Bill 2013 enters into force (2009 Recommendation III and IX.i-ii); and

Action taken as of the date of the follow-up report to implement this recommendation:

The Protected Disclosures Act, which passed into law in 2014, now provides a single, comprehensive regime for whistle-blower protection in both the public and private sectors. Pre-existing sectoral whistle-blower protections have been aligned with the Protected Disclosure Act where they might be considered to allow wider protections.

The Department of Public Expenditure and Reform has prepared draft guidance for Public Bodies on their implementation of the Protected Disclosures Act (including draft sample procedures). This has been opened for public consultation and is expected to be finalised for issue to Public Bodies by end 2015.

The Workplace Relations Commission, in consultation with staff and employer representatives, has developed a Code of Practice giving guidance and setting out best practice to help employers, workers and their representatives understand the Protected Disclosures Act, and this has been placed on a statutory footing.

Ireland has in place a website which focuses on tackling Bribery and Corruption. This is a cross-Departmental approach by the Irish Government to raise awareness of bribery and corruption and of Ireland's commitments to tackle these issues and provides contact details for individuals who wish to report corrupt practices taking place in international business transactions.

As regards employees of the Department of Foreign Affairs and Trade, and as already indicated in respect of recommendations 9(a) and (b), A.O. Circular 03/13 contains reporting guidelines for staff of DFAT. The Circular makes it a requirement for all staff of the Department to report immediately any information that they may become aware of regarding suspected acts of bribery by Irish nationals, residents, companies or other incorporated bodies. It sets out the procedures for reporting, including contact points in DFAT and the Garda Síochána. The Circular also requests staff to be pro-active in bringing to the attention of the business community the provisions of the Convention and relevant Irish legislation. Training sessions to be organised for DFAT staff in 2016 will highlight inter alia the available channels for reporting suspected acts of bribery and the protections afforded to "whistleblowers".

If no action has been taken to implement recommendation 9(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(e):

9. Concerning awareness and reporting foreign bribery, the Working Group recommends that Ireland:

(e) Harmonise to the greatest extent possible the current whistleblower protections in legislation in the Protected Disclosures Bill 2013 (2009 Recommendation IX.iii).

Action taken as of the date of the follow-up report to implement this recommendation:

The Protected Disclosures Act, which passed into law in 2014, now provides a single, comprehensive regime for whistle-blower protection in both the public and private sectors. Pre-existing sectoral whistle-blower protections have been aligned with the Protected Disclosure Act where they might be considered to allow wider protections.

If no action has been taken to implement recommendation 9(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(a):

10. Regarding public contracting opportunities for Irish entrepreneurs, the Working Group recommends that Ireland:

(a) Revisit the policies of agencies responsible for development aid, public procurement and public-private partnerships, to take due consideration of prior convictions of foreign bribery in their contracting decisions, as previously recommended in Phase 2 (Convention, Article 3.4; 2009 Recommendation XI); and

Action taken as of the date of the follow-up report to implement this recommendation:

The Office of Government Procurement was established in 2014 and now has full responsibility for procurement policy and procedures.

As previously stated, all tenderers for public contracts must complete a statutory declaration that they have not been convicted of any of the offences referred to in S.I. No. 329/2006, including corruption.

The Office of Government Procurement has issued a suite of standard procurement documents for use by all public bodies that contain this declaration. The recently revised EU Directive on Public Procurement expands the grounds for exclusion to include corruption “as defined in the national law” The new Directive will be in place by April 2016.

The Public Procurement Guidelines – Competitive Process (2010) make contracting authorities responsible for guarding against corrupt or collusive practices. It states that *"To safeguard against improper or unethical practices contracting authorities must also take measures to separate functions within the procurement cycle, by ensuring that, for example, ordering and receiving of goods and services are distinct from payment for services."* Additionally, the Guidelines state: *"Contracting authorities should be aware of potential conflicts of interest in the tendering process and should take appropriate action to avoid them."*

As noted above, since July 2014, details of the Convention and relevant legislation have also been included in a booklet, ‘Promotional Guidelines for the Embassy Network’, produced by the Trade Division of the Department of Foreign Affairs and Trade (DFAT) and targeted at staff located abroad. Training on the Convention is also held annually for the benefit of staff taking up duty abroad, and Irish Aid, which is managed by the Development Co-operation Division of DFAT, has conducted separate anti-corruption training for its staff, which has included Convention-specific training. In addition, it is the policy and practice of DFAT’s Trade Division to include the aforementioned reporting guidelines in all briefing packs for DFAT Ministers and accompanying officials participating in trade missions.

If no action has been taken to implement recommendation 10(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(b):

10. Regarding public contracting opportunities for Irish entrepreneurs, the Working Group recommends that Ireland:

(b) Consider routinely checking publicly available debarment lists of multilateral financial institutions in relation to public procurement contracting (Convention, Article 3.4; 2009 Recommendation XI).

Action taken as of the date of the follow-up report to implement this recommendation:

Contracting authorities are encouraged to check all statutory declarations. In addition, Ireland is currently in the process of transposing the revised EU procurement Directives which were adopted earlier this year. These Directives contain clearer provisions in relation to issues, including corruption, the scope available to contracting authorities during the tender process and managing the contract post award. The Office of Government Procurement has recently issued a consultation document to assist in the transposition of the Directives. Consideration of enhancing the current rules and issuing new guidance will be done as part of this process. It is expected that the Directives will be transposed before the deadline of April 2016.

If no action has been taken to implement recommendation 10(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(a) Application of the foreign bribery offence in POCA 2010 to the bribery of persons performing a public function for a foreign public enterprise (Convention, Article 1);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As outlined *ibid*, there have been no foreign bribery prosecutions to date; accordingly, there has been no new case law, doctrinal, administrative or other relevant developments from a prosecutorial perspective since the adoption of the Phase 3 Evaluation Report on Ireland relevant to the issue.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(b) Level of sanctions for foreign bribery imposed on natural and legal persons (Convention, Article 3);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Not Applicable

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(c) Imposition of disqualification orders under the Companies Act 1990 upon conviction for foreign bribery (Convention, Article. 3.4);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

However, with regard to legislative matters, the Companies Act 1990 has been repealed and replaced by the Companies Act 2014. Company Law does not in general address non-company law offences however there are exceptions.

Section 839 of the Companies Act 2014 provides for automatic disqualification on conviction of certain indictable offences as follows:

839. (1) A person is automatically disqualified if that person is convicted on indictment of—

(a) any offence under this Act, or any other enactment as may be prescribed, in relation to a company, or

(b) any offence involving fraud or dishonesty.

(2) A person disqualified under subsection (1) is disqualified for a period of 5 years after the date of conviction or for such other (shorter or longer) period as the court, on the application of the prosecutor or the defendant and having regard to all the circumstances of the case, may order.

(3) A person disqualified under subsection (1) is deemed, for the purposes of this Act, to be subject to a disqualification order for the period of his or her disqualification.

(4) Subsection (1) is in addition to the other provisions of this Act providing that, upon conviction of a person for a particular offence, the person is deemed to be subject to a disqualification order.

Additionally section 842 of the 2014 Act provides for circumstances in which the court may make a disqualification order for such period of time as the court thinks fit including:

(a) that the person has been guilty, while a promoter, officer, statutory auditor, receiver, liquidator or examiner of a company, of any fraud in relation to the company, its members or creditors,

(b) that the person has been guilty, while a promoter, officer, statutory auditor, receiver, liquidator or examiner of a company, of any breach of his or her duty as such promoter, officer, auditor, receiver, liquidator or examiner,

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(d) that the conduct of the person as promoter, officer, statutory auditor, receiver, liquidator or examiner of a company makes him or her unfit to be concerned in the management of a company,

(e) that, as disclosed in a report of inspectors appointed by the court or the Director [Director of Corporate Enforcement] under this Act, the conduct of the person makes him or her unfit to be concerned in the management of a company,

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(g) that the person has been guilty of 2 or more offences under section 286 , [Section 286 relates to offences in relation to accounting records]

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(d) Imposition of confiscation measures for foreign bribery (Convention, Article 3.3);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, legislative, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(e) Enforcement of the foreign bribery offence against companies incorporated in Ireland that have a limited connection to Ireland;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, legislative, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(f) Whether factors prohibited by Article 5 of the Anti-Bribery Convention may influence decisions of whether to investigate or prosecute foreign bribery cases (Convention, Article 5);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, legislative, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(g) Application of the ‘reasonable grounds’ standard required to obtain search warrants in the investigation of foreign bribery cases pursuant to POCA 2001 (Convention, Article 5; 2009 Recommendation III, V, and Annex 1);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, legislative, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(h) The threshold for external audit requirements, and required internal company controls under S.I. No. 220/2010 and, once it enters into force, the Companies Bill 2012 (Convention, Article 8; 2009 Recommendation X.A); and

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Companies Bill 2012 was enacted in 2014 to become the Companies Act 2014 and was commenced on 1 June 2015.

Requirements in relation to internal company controls, specifically audit committees, were dealt with in relation to Recommendation 7(d) above.

The audit exemption regime is set out in sections 358 - 364 of the Companies Act 2014 and provides that a company that meets the definition of a “small company” is entitled to be able to avail itself of an exemption from having its statutory financial statements audited. The audit exemption criteria are in line with article 52 of Directive 2013/34/EU which simplifies the accounting requirements for small companies and improves the clarity and comparability of companies' financial statements within the European Union. The Directive takes the small company or group as the starting point and imposes additional requirements on medium-sized companies and groups and more requirements on large companies and groups as well as on “public interest entities”.

A “small company” is defined at section 350 of the Act and provides that the qualifying conditions for a small company are satisfied in relation to a financial year in which it fulfils two or more of the following requirements:

- (a) the amount of the turnover of the company does not exceed €8.8 million;
- (b) the balance sheet total of the company does not exceed €4.4 million;
- (c) the average number of employees of the company does not exceed 50.

A holding company that prepares group financial statements or a company listed at Schedule 5 of the Act is excluded. Schedule 5 can be accessed at

<http://www.irishstatutebook.ie/eli/2014/act/38/schedule/5/enacted/en/html#sched5>.

A group company can also qualify for audit exemption if the group qualifies as a small group. Section 359 of the Act provides that the qualifying conditions for a small group are satisfied by a group in relation to a financial year in which it fulfils 2 or more of the following requirements:

- (a) the balance sheet total of the holding company and the other members of the group taken as a whole does not exceed €4.4 million,
- (b) the amount of the turnover of holding company and the other members of the group taken as a whole

does not exceed €8.8 million,

(c) the average number of persons employed by the holding company and the other members of the group taken as a whole does not exceed 50.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develop:

(i) Application of the non-tax deductibility provision in section 41(1) of the Finance Act, to ensure that it effectively implements Paragraph I(i) of the 2009 Tax Recommendation (2009 Recommendation III and VIII; 2009 Tax Recommendation I).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There has been no new case law, legislative, administrative or doctrinal developments since the adoption of the Phase 3 Evaluation Report.

ANNEX 1: TABLE OF CASES - UPDATE

Case	Parties	Status
<p>Case 1</p>		<p>This case remains under assessment.</p> <p>Media reports in relation to this matter highlight that the alleged offences occurred sometime before October 2005.</p> <p>The case resulted in an employee of a foreign company being found guilty of offering bribes to government officials and receiving a five year term of imprisonment in the foreign non OECD Jurisdiction. .</p> <p>The foreign company was in partnership at the time with a company which has links to Ireland.</p> <p>The case has been under assessment by the Irish Authorities to ascertain if there was any credible allegations with territorial links to Ireland.</p> <p>Since 2006, several requests have been sent via Interpol for further information. To date no information has been received from the authorities in the foreign jurisdiction relating to the involvement of any Irish officials, company or persons. No credible allegation with territorial links to Ireland has been identified. And</p>

		therefore,Ireland proposes deletion of this case from the
Case 2		<p>The case relates to a foreign company which was the subject of civil proceedings taken in another jurisdiction.</p> <p>The case has been under assessment by the Irish Auhtorities to ascertain whether there is any evidence of credible allegations with territorial links to Ireland.</p> <p>Requests for information have been sent via Interpol to the relevant authority in the Country concerned in 2013. No information has been provided in response.</p> <p>Members of Law Enforcement have met on separate occasions with representatives of that country during which the need for cooperation was highlighted. However, no information has been received to date .</p> <p>Investigations have not identified a credible allegation with territorial links to Ireland.</p>
Case 3		<p>The case relates to a foreign company which was the subject of civil proceedings taken in another jurisdiction.</p> <p>The case has been under assessment by the Irish Auhtorities to ascertain whether there is any evidence of credible</p>

		<p>allegations with territorial links to Ireland.</p> <p>.</p> <p>Requests for information have been sent via Interpol to the relevant authority in the country concerned in 2013. No information has been provided in response.</p> <p>Members of An Garda Síochána met on separate occasions with representatives of that country during which the need for cooperation was highlighted. However, no information has been received to date in relation to these allegations</p> <p>In addition, enquiries have been made by the Department of Foreign Affairs with their Embassy in the Country concerned. .</p> <p>No credible allegation with territorial links to Ireland has been identified and therefore,</p>
<p>Case 4.</p>		<p>This case remains under investigation.</p> <p>The Company concerned is a subsidiary of a foreign company.</p> <p>MLA requests have been made in</p>

		<p>relation to this case.</p> <p>This case has been advanced And the investigation continues.</p>
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ANNEX 2: ADDITIONAL INFORMATION.

Public Sector Standards Bill

The Public Sector Standards Bill is currently being drafted and is expected to be published before the end of the year. The proposed Bill is designed to

- modernise, simplify and streamline the current legislative framework;
- put in place a consistent, coherent and proportionate framework for all public officials at both local and national level which is calibrated to conflict of interest and corruption risks;
- put in place a framework which corresponds to international best practice and is appropriately balanced to other important public policy objectives including safeguarding privacy and encouraging participation in public life
- ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.

The Scheme of the Bill can be accessed at <http://www.per.gov.ie/en/public-sector-standards-bill/>

Protected Disclosures Act 2014.

The Act can be accessed at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html>

What is the position in relation to the protection of whistleblowers in Ireland?

The Protected Disclosures Act 2014, which was enacted in July 2014, puts in place a framework of protections for workers who are penalised for having reported serious wrongdoing in the workplace.

What is a protected disclosure?

A “protected disclosure” is a disclosure of relevant information made by a worker in relation to wrongdoing that has come to his or her attention in the workplace, either before or after the date of the passing of the Act, in the manner specified in the Act.

What matters can be reported on ?

The following matters are relevant wrongdoings for the purposes of the Act—

- a) that an offence has been, is being or is likely to be committed,

- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being or is likely to be endangered,
- e) that the environment has been, is being or is likely to be damaged,
- f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- h) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

Who is protected?

The definition of 'worker' in the Act is broadly drawn and includes not only persons who are direct employees but also contractors, sub-contractors, agency workers, members of the police forces, members of the security forces and any person who interacts with the work place on a contractual basis.

Given the uncertainty surrounding their contractual status volunteers are not covered.

In addition to persons who are defined as workers under the Act protection is also made available to third parties who may suffer detriment as a consequence of a protected disclosure having been made by another.

What protections are available?

Workers who are direct employees are provided with access to the existing industrial dispute resolution mechanisms of the state. Employees such as trainees and apprentices who are currently excluded from those mechanisms are provided with access to the mechanisms if they have been penalised for having made a protected disclosure. In the case of all workers who are employees access to the mechanisms is granted on a day one basis without further restriction. In addition, the compensation payable under those mechanisms has been substantially increased in respect of persons penalised for having made a protected disclosure.

In the case of workers who are not direct employees and who are operating under a contract for services an action in tort may be taken against the person who caused them detriment. Similar provisions apply in respect of third parties who claim to have suffered detriment as a consequence of the making of a protected disclosure by another person.

How does a worker report his/her concerns?

The Act sets out a "stepped disclosure regime".

The simplest form of disclosure, and the form which is to be encouraged, is to the employer where all that is required is a reasonable belief that the information disclosed shows or tends to show that the

wrongdoing is occurring. This is a deliberately low threshold designed to ensure that most reports are made to the person best placed to correct the alleged wrongdoing – the employer. In the case of worker in a public body that worker may choose, as an alternative, to report to the relevant Minister.

A worker may choose to report to an external regulatory body with functions in the area which are the subject of the allegations. In such a case the threshold for protection increases to a reasonable belief in the substantial truth of the matters reported. In reality this is not a significantly higher threshold. While the matter may subsequently prove not to be substantially true the existence of a reasonable belief remains paramount.

A worker may choose to report externally to a member of the Oireachtas or to another external source such as the media. Any person proposing to make such an external report whilst at the same time attracting the protections must however satisfy a series of strictly drawn conditionalities set out in the Act. While it is possible to satisfy these conditionalities the stepped disclosure regime will tend to make disclosure directly to the employer or to an external regulatory body the easier, and therefore preferable, option.

Is there any restriction on the nature of the information that can be reported?

No type of information excluded from being reported under the Act.

The Act does however recognise that certain types of information are more sensitive than others so that for example, the external reporting of matters relating to law enforcement can only be made to a member of the Oireachtas. In the case of information that might reasonably be expected to adversely affect the security, defence, or international relations of the State, a specific disclosure route is set out which is designed to allow disclosure in a secure and confidential manner.

Does a disclosure have to be made ‘in good faith’?

The Act does not contain a ‘good faith’ test. Experience elsewhere has shown that the inclusion of such a test could call into question the discloser’s motivation for coming forward. A disclosure not made in ‘good faith’ must have been made in ‘bad faith’ thus calling into question the motivation for the making of the disclosure in the first instance.

Ireland decided that even if the matters reported on subsequently proved not to be correct the discloser should be entitled to the protections of the Act provided he/she had a reasonable belief in the allegations made. Additionally it was considered to be a particularly unjust outcome that a person who correctly reported a wrongdoing might potentially find themselves without the protections simply as a consequence of their perceived motivation for reporting.

It was considered therefore that the potential for the motivation of a discloser’s motivation to be questioned would act as a significant disincentive to potential whistleblowers coming forward in the first instance. Similar considerations were taken into account in relation to the imposition of a ‘public interest’ test and no such test is included. As a consequence the Act specifically states that the motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.

The only instance where motivation may become an issue relates to the award of compensation for penalisation following the making of a protected disclosure. In the event that the investigation of the relevant wrongdoing concerned is found not to have been the sole or main motivation for making the disclosure, the amount of compensation awarded may be reduced by up to 25 per cent less than the amount that it would otherwise be. Any question as to whether such a reduction should occur would of course be dependent on the circumstances of each individual case.

Is the discloser's identity maintained?

The Act imposes an absolute burden of confidentiality on the recipient of a protected disclosure or any other person to whom the disclosure is referred in the performance of their duties.

While a failure to comply with this absolute duty is actionable by the person who made the disclosure was made if he/she suffers any loss by reason of that failure the Act also sets out a number of reasonable practical and pragmatic circumstances under which the absolute duty does not apply. Among these are where the recipient reasonably believes that the discloser has no objection to being identified (simply achieved by asking) or where the revelation of the identity of the discloser becomes necessary for the effective investigation of the complaint or where the revelation is necessary to prevent the commission of a crime.

How does the Act compare with international standards and recommendations?

In formulating the legislation Ireland had regard to the publications and recommendations of many international bodies in relation to the content of whistleblower protection legislation. Among these were the United Nations Convention Against Corruption, the G20 Anti-Corruption Plan and subsequent report of the OECD, resolutions of the European Parliament and recommendations from the advocacy body Transparency International.

Significant efforts were made to ensure that the recommendations of these bodies were taken into account. As a result the Act benchmarks very favourably with those recommendations and has been praised internationally as a leader in its field.

How will employers deal with protected disclosures?

The Act requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the public body. The Minister for Public Expenditure will issue Guidance for the purpose of assisting public bodies in the performance of these functions and a number of engagements have taken place with public bodies in relation to the content of this Guidance.

In addition to the Guidance for public bodies to be issued by the Minister the Labour Relations Commission is, following discussion with employer and trade union representatives, close to finalising statutorily based Code of Conduct for employers and trade unions in relation to the making of and handling of disclosures made under the Act.

Under the Protected Disclosures Act public bodies are required to compile and make public reports on the operation of the Act, including the number of the disclosures received on an annual basis. As this is the first year of the operation of the Act, the information is not yet available, but such data that will be available in the future.