

IRISH COMPANIES URGED TO ENSURE ANTI-CORRUPTION MEASURES IN PLACE



National and international legislation on foreign bribery has teeth, with fines and prison sentences increasingly being handed down to businesses in OECD member countries. Irish companies doing business internationally should ensure they have adequate anti-corruption measures in place, warns the Bilateral Trade Promotion Unit at the Department of Enterprise, Trade and Development.

THE CRIMINAL ASSETS BUREAU HAS POWER TO SEIZE A SUSPECTED BRIBE (SECTION 23 OF THE PROCEEDS OF CRIME ACT 2005)



PRISONS SENTENCES AND FINES HAVE ALREADY BEEN HANDED DOWN

The OECD Anti-Bribery Convention has real teeth. Since it came into force in 1999, there have been important changes to national anti-corruption laws in every signatory country. There has also been a marked increase in the number of foreign bribery investigations and prosecutions. As of the beginning of 2007, there were more than 100 ongoing investigations into foreign bribery cases. Prison sentences have been handed down in several countries, and individuals and companies that committed foreign bribery have been penalised with fines of up to US\$28 million.

Entrance into emerging markets in the former Soviet Union, Eastern Europe, and the Middle East and in the Asia Pacific region brings with it new challenges for Irish business - not just in relation to export/import regulations, currency fluctuations, language difficulties and other day to day running issues, but also in terms of compliance with a comprehensive raft of international regulatory instruments, including anti-corruption conventions. These include the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe Criminal Law Convention on Corruption and the UN Convention against Corruption.

In pressurised international markets, Irish companies can face tough competition, not least the pressure from competitors abroad, who may well promote their business and sales through 'gifts', disguised payments or inflated 'commissions' - in short, through actions that may be deemed to be corrupt, and as such, in violation of international anti-bribery instruments such as the OECD Convention.

BRIBERY AND CORRUPTION - NECESSARY BUSINESS EXPENSE OR AN EXPENSIVE MISTAKE?

Bribery and corruption seem to be particularly prevalent in certain kinds of transactions - awarding of public contracts; in certain economic sectors and in certain countries. Large scale multinational companies, as well as small and medium sized enterprises, can be equally targeted. The 'gifts' and 'commissions' demanded may

range from small favours to large payments to senior members of governments.

It may be suggested to companies doing business abroad that 'sweeteners'; excessive levels of commission - in short bribery - are unavoidable and/or necessary evils if the company is to cinch the deal. Indeed, until recently, many multinational companies in developed countries routinely regarded these payments as a regrettable but necessary business expense.

SO WHAT IS BRIBERY AND CORRUPTION?

Bribery is a specific offence of offering or giving something (usually money) in order to gain an illicit advantage. Bribery is corruption by definition. Corruption may encompass a number of offences such as fraud, abuse of one's position of power and money laundering. This is not only a domestic problem but also a worldwide problem.

WHAT ARE THE CONSEQUENCES FOR VIOLATION OF ANTI-BRIBERY LEGISLATION?

Since the enactment of the *Prevention of Corruption (Amendment) Act, 2001*, the law on corruption in Ireland has been strengthened. This amendment brings the *OECD Convention on Bribery of Foreign Public Officials in International Business Transactions* into effect in domestic law. Companies can and will be prosecuted in Ireland if found guilty of offences under the Act, including bribing foreign public officials by Irish nationals and companies and their agents abroad. Some of the consequences of a conviction include the following:

– Prosecution in Ireland resulting in up to 10

Recommended anti-corruption measures for companies

Irish businesses, both at home and abroad, should implement anti-corruption policies and practices, including anti-corruption guidelines, training, internal audit procedures and reporting requirements. The challenge for business is to maintain, review and develop these measures to respond to changing circumstances. Some of the specific measures a business could implement may include:

- Establishing an anti-corruption policy
- Ensuring all employees are familiar with relevant bribery and corruption laws, their roles in the business, their responsibilities and the appropriate response to any suspicion of corrupt activity
- Ensuring that agents and partners who are representing or purporting to represent your business have adequate and valid credentials for the activities been undertaken
- Establishing monitoring and reporting requirements for agents and partners representing your business
- Establishing a clear and accessible systems for reporting any suspicious behaviour.

- years imprisonment and an unlimited fine (*Prevention of Corruption (Amendment) Act, 2001*)
- The Criminal Assets Bureau has power to seize a suspected bribe (*Section 23 of the Proceeds of Crime Act 2005*)
- Possible prevention from bidding on any public contract within the European Union
- If companies are found to have bribed on any projects funded by the World Bank or other international financial institutions, the company can be debarred from bidding on contracts funded by the World Bank, the International Monetary Fund and other institutions. Companies may also be publicly named-and-shamed.

ANTI-CORRUPTION - WHAT IS THE IRISH GOVERNMENT DOING?

Corruption has become an issue of major political and economic significance in recent years and the necessity to take measures against it has become evident.

Since ratification of the *OECD Convention on Bribery of Foreign Public Officials*, Ireland has been in discussion with the OECD in relation to this country's implementation of the convention, and the OECD has suggested a range of actions to be undertaken by Ireland.

Accordingly, the relevant Irish Government Departments and bodies have initiated a comprehensive programme to ensure that implementation is being progressed. This includes the Department of Justice, Equality and Law Reform, the Garda Síochána, the Department of Foreign Affairs, the Department of Finance, the Revenue Commissioners, the Office of the

Director of Corporate Enforcement and the Department of Enterprise, Trade and Employment.

WHAT IS THE DEPARTMENT OF ENTERPRISE, TRADE AND EMPLOYMENT DOING?

The Department of Enterprise, Trade and Employment along with Enterprise Ireland, IDA, IBEC, and Shannon Development are working to generate an awareness of the OECD Convention and the relevant legal standing for companies and individuals.

This DETE has compiled a brochure entitled 'OECD-Anti-Bribery Initiative', which sets out the main elements and provisions of the OECD Convention on Combating Bribery of Foreign officials. The brochure clearly sets out the implications for companies and individuals of engaging in the foreign bribery offence. Plans are in place to circulate this publication to employees of the relevant sections of the Department of Enterprise, Trade and Employment and to those government agencies which operate within the remit of the Department of Enterprise, Trade and Employment and which engage with Irish companies operating abroad.

In addition, the Companies Registration Office of the Department of Enterprise, Trade and Employment has agreed to include an article drawn from the anti-corruption information leaflet in a future instalment of its electronic newsletter. As this is circulated to every registered business in Ireland, the OECD Convention on anti-bribery will receive nation-wide exposure to a key target group. **M**

PRISON SENTENCES HAVE BEEN HANDED DOWN IN SEVERAL COUNTRIES, AND INDIVIDUALS AND COMPANIES THAT COMMITTED FOREIGN BRIBERY HAVE BEEN PENALISED WITH FINES OF UP TO US\$28 MILLION.