

INDEPENDENT ANTI-CORRUPTION AGENCY

FOR THE PURPOSE OF
PREVENTING, INVESTIGATING
AND PROSECUTING CORRUPTION IN IRELAND



**Social
Democrats**

The Social Democrats are deeply appreciative of the significant contribution of Gavin Elliott BL and Rory Treanor BL in the development of this proposal.

CONTENTS

1. EXECUTIVE SUMMARY	1
2. INTRODUCTION	3
3. ISSUES TO BE ADDRESSED	4
Investigation And Enforcement	4
Executive And Legislature	5
Lobbying	5
Political Finance, Expenses And Allowances	6
Judiciary	7
4. PROPOSAL	8
Purpose Of The Agency	9
Appointment	10
Supervision	11
Finance	12
5. POWERS OF THE INDEPENDENT ANTI-CORRUPTION AGENCY	13
Consolidation	13
Legislative Proposal	13
Investigation	13
Prosecution	14
Recommendation	14
Systemic Inquiry	15
Advisory Function	15
Confidential Recipient	16
Immunity From Prosecution	16
6. APPROACHES IN OTHER JURISDICTIONS	17
Multi-Purpose Bodies	18
Law Enforcement Bodies	20
Policy, Co-Ordination And Prevention Bodies	21

1. EXECUTIVE SUMMARY

Why is there a need for a new Agency?

Ireland does not have an effective means of preventing, investigating and prosecuting corruption. There is no overarching or consolidated approach to combatting corruption. The law on corruption is scattered across multiple pieces of legislation and responsibility for dealing with it is spread across several public bodies.

It is difficult and indeed rare to see successful prosecutions of corrupt practices in business or public life. Even after costly and lengthy Tribunals of Inquiry there have been few consequences for those against whom negative findings have been made. There is a strong public perception of a golden-circle in Irish society, the members of which are accountable to no-one, and regard themselves as untouchable.

A consolidation of the agencies charged with tackling corruption and the strengthening of the legislative framework within which they operate is required. Along with a higher level of transparency and accountability in their activities, this will help to build confidence in the institutions of the State. It will also renew public and international confidence in Ireland as a place to do business.

What exactly is proposed?

A root and branch reform of the anti-corruption regime in Ireland. We are proposing:

- the creation of a new body called the Independent Anti-Corruption Agency (IACA).
- the creation of a new Dáil oversight committee, called the Public Interest Committee, which would draw a majority of its membership from the Opposition.
- a consolidation and up-grading of anti-corruption legislation.

What would the new Agency do?

This agency, which is based on the very successful model recently adopted in Victoria, Australia, would become responsible for preventing, investigating and prosecuting corruption activities in Ireland.

Initially, the core functions of the agency would be to:

- Operate a Standing Commission of Investigation.
- Have full oversight of public procurement.
- Draw up new anti-corruption legislation.
- Conduct sectoral reviews.
- Act as an advisory body to other regulatory and supervisory bodies.

EXECUTIVE SUMMARY

ANTI-CORRUPTION FRAMEWORK

IACA shall assume the core functions of the following bodies:

- SIPO¹
- Office of the Director of Corporate Enforcement
- Registrar of Lobbyists

IACA shall provide an advisory function to the following bodies²:

- Garda Síochána Ombudsman Commission.
- Comptroller & Auditor General
- Defence Forces Ombudsman.
- Garda Bureau of Fraud Investigation.
- A new Electoral Commission
- Professional Bodies

IACA shall itself be accountable to a new Dáil Committee called the Public Interest Committee

What Powers would the Agency have?

The Independent Anti-Corruption Agency would have the following powers:

- powers of investigation,
- power to apply for search warrants,
- to seize evidence,
- to apply for disclosure,
- arrest,
- take sworn testimony,
- compel witnesses,
- access bank records.

The agency would have the power to prosecute offences before the District and Circuit Court and beyond this, cases would be taken by the Director of Public Prosecutions.

Operational Issues

The head of agency shall be appointed by a two thirds majority of the Dáil.

The Agency would be financed directly by the Oireachtas. It would itself be accountable to a new Dáil Committee, the Public Interest Committee. This committee would have a non-Government majority.

¹ In respect of its anti-corruption mandate

² The Social Democrats will shortly be bringing forward proposals for the establishment of a new Electoral Commission. It is proposed that the agency will have an advisory function in relation to this body.

2. INTRODUCTION

In February 2014 the European Commission published the EU Anti-Corruption Report. The efforts of the current government were commended as an ambitious attempt to reform the anti-corruption regime in Ireland. At an international level Ireland ratified the United Nations Convention against Corruption (UNCAC) and the Council of Europe Group of States against Corruption (GRECO).

At present, responsibility for the prevention, detection, investigation and prosecution of corruption and white-collar crime is shared between a variety of bodies, including tribunals of inquiry, commissions of inquiry, high court inspectors, the Financial Regulator, SIPO, the Garda Bureau of Fraud Investigation and the Criminal Assets Bureau. The most powerful body is the Director of Public Prosecutions which deals with the most serious instances of corruption.

It is a premise of this policy proposal that the wide range of investigative bodies and varying powers they hold to exercise their jurisdiction serves to undermine public confidence in Ireland's capacity to tackle corruption. It is also likely that such a wide range of bodies, with over-lapping responsibilities, will result in genuine cases of corruption escaping investigation.

The Mahon Tribunal recommended SIPO adopt a simplified complaints procedure and that SIPO have a wider remit to investigate local and regional complaints. This recommendation was specific to the context of Judge Mahon's investigation but such recommendations could easily be extended to the anti-corruption regime as a whole.

Tribunals of Inquiry have of themselves negatively affected public confidence in Ireland's ability to tackle corruption. Tribunals have come to be seen as systems that benefit lawyers more than they benefit society. While most recently short investigations, such as that conducted by Judge Niall Fennelly and Sean Guerin SC do have public support, the harm done by the longest running and most expensive investigations will not be undone by subsequent efforts. More recently though, the powers afforded to the Cregan Investigation into activities in IBRC have proven to be wholly inadequate. Further, the ad hoc nature of these investigations risks raising the impression that the national response to instances of alleged corruption is responsive and reactionary rather than systemic.

The approach taken in the past and to a lesser extent the reforms being brought about by the current government are perpetuating the issues. A root and branch reform of the anti-corruption regime is needed. A consolidation of the agencies charged with tackling corruption and the strengthening of the legislative framework within which they operate is required. Along with a higher level of transparency and accountability in their activities, this will help to build confidence in the institutions of the State. It will also renew public and international confidence in Ireland as a place to do business.

3. ISSUES TO BE ADDRESSED

At present there is no single body responsible for anti-corruption activities in Ireland. To date governments have been reactive rather than proactive and where the issue of corruption has arisen they have sought to treat the symptom instead of tackling the cause. There has been a heavy focus on historical investigation and little learned from the process. A more cynical view, prevalent in Ireland, is that politicians are reluctant to empower institutions which may prove their undoing.

Investigation and Enforcement

In Ireland there is a low rate of prosecution of corruption offences. The failure of successive governments to take a coherent approach to the investigation and prosecution of corruption is in large part to blame. The approach has been to target corruption in particular sectors instead of acknowledging the common features to corrupt practice in all sectors.

The following legislation has either been enacted, is going through the legislative process or has been proposed in some form:

- Criminal Justice Act 2011
- Prevention of Corruption (Amendment) Act 2010 (After 2003 Anti-Bribery Convention of the OECD)
- Criminal Justice (Corruption) Bill 2012 (Not yet drafted)
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- Anti Money laundering Compliance Unit established as part of the Department of Justice giving effect to 3rd EU Money Laundering Directive 2005
- Criminal Justice Act 2013 [Formerly the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2012]
- Protected Disclosure Act 2014
- Regulation of Lobbying Act 2015

This legislation and proposed legislation is the corruption framework in Ireland at present. As can be seen from the above list, there is no overarching or consolidated approach to combatting corruption. The piecemeal fashion in which this area has evolved in the last five years has not provided a modern and workable system for combatting misfeasance in public life. The anti-corruption regime today in Ireland is confused and disjointed. The root and branch reform must begin with the laws with which any anti-corruption body must work.

ISSUES TO BE ADDRESSED**Executive and Legislature**

The Executive in Ireland wields an exceptional amount of power. In turn it falls to individual Ministers to make appointments to state bodies. As was seen in the case of John McNulty, a Fine Gael election candidate with no experience appointed to the board of the Irish Museum of Modern Art for reasons of future political advancement, the power of appointment vested solely in Ministers is open to abuse. Similarly, many Ministerial decisions on the spending of public money are taken in a manner which can give rise to the suspicion that they were taken in the interests of the Minister rather than for the public good.

The lack of official oversight of such appointments or decisions and that such appointments or decisions can be made without any formal need to justify such decisions invites corrupt practice and at a minimum the appearance that the decision has been taken for reasons other than its merits. While Ministers will always hold the power of appointment, there should be a requirement that any such appointments be reasonable. A system should exist where an appointment can be referred to an oversight body to confirm that the Minister's power was used in an appropriate manner and we make suggestions on this below.

Lobbying

There is no need to go over the well-trodden ground of illicit contact between lobbyists and politicians. It need only be acknowledged that lobbying plays an important part in informed governance but the retention of public trust in government must be the priority. Much has been done to address the lobbying sector under the current government. The requirement that any lobby group register (initially with SIPO) has been a positive step. The establishment of a register of lobbyists is a major tool in the fight against corruption. The government is to be commended for the wide-ranging consultation process which preceded the drafting of the bill and for adopting a model appropriate to the Irish context.

The legislation has created a simple three step test for whether an individual or group is acting as a lobbyist. Contravention of the rules is subject to criminal sanction, though this will not come into effect until the first review of the register has taken place and any potential problems have been resolved. There has been a public awareness campaign to draw people's attention to the new system.

As with every such body, the success or otherwise of the registrar will depend on the level of support, both political and financial, given by the government. It is to be hoped that future governments will not squander the opportunities this presents.

ISSUES TO BE ADDRESSED**Political Finance, Expenses and Allowances**

Political finance is an obvious vector for corruption. Effective supervision of political finance rules and strict application of the law is vital for the continued health of the democratic process. In some respects the dangers posed by the purchase of access to policy makers by party donors is more critical and egregious than forms of corruption that lead to personal enrichment. However the right of individuals to lend their support to political parties is an important component of freedom of expression. A balance must be struck between these two important, but potentially conflicting principles.

The Electoral Acts were enacted in the shadow of the Flood and Moriarty Tribunals and from laudable motives. The regulation of political donations at a national level is undertaken by SIPO but at a local level responsibility falls on local authorities. This distinction is arbitrary. GRECO, in its third round evaluation report on Ireland, called it “cumbersome” for people subject to those regulations and difficult for the general public to understand. Only the consolidation of regulation of political finance can give full effect to the recommendations of the tribunals mentioned. There are many aspects of the electoral acts which require revision, including the definition of “third parties”, the definition of “political purpose”, the definition of “donation” and the manner in which the value of expenditure is assessed.

The expenses and allowances process within the Oireachtas has been extensively overhauled. Unvouched expenses are largely a thing of the past. The abuse of parliamentary expenses is not unique to Ireland and it was of great public benefit that some politicians have been investigated and prosecuted for this type of corruption.

The issue of political expenses poses two distinct challenges. First is the threat of actual corruption, whereby a politician unlawfully enriches him or herself at the public expense. The second is that the perception of graft spreads to every politician and undermines confidence in the democratic process.

Whilst SIPO performs some functions that address corruption related to political finance, it is limited in its powers of investigation and enforcement.

In 2011 there were 22 valid complaints made to SIPO and between 1995 and 2012 there were only 11 investigations concluded under the Ethics Acts. SIPO has repeatedly called for more powers, including the powers to undertake investigations on its own initiative and the power to conduct hearings and make decisions with greater efficiency.

ISSUES TO BE ADDRESSED

The Mahon Tribunal recommended the extension of SIPO's powers and in particular that they should have a supervisory role over the committees of the Oireachtas and enforcement powers at a local government level. Mahon also noted that the Ethics Acts do not impose a sufficiently broad interpretation of Conflict of Interest. The definition at present does not require detailed disclosure of actual or perceived conflict and imposes limited obligations to disclose indirect conflict. Finally Mahon noted that there was no adequate deterrent in place to ensure complete disclosure of conflicts of interest.

Judiciary

Appointment of judges is by the government on the advice of the Judicial Appointments Advisory Board. In January 2014 a committee chaired by Chief Justice Susan Denham described the Judicial Appointments system as "demonstrably deficient." A call was made to convene a high level body to carry out research into the reform of the judicial appointments system. Preliminary recommendations for such a reform included that political allegiance should have no bearing on appointment and that "the merit principle should be established in legislation."

To date no reform of this kind has been brought forward. This issue will be the subject of a separate proposal. However, the Independent Anti-Corruption Agency will have a key role in these new arrangements.

4. PROPOSAL

It is proposed that the best model to adopt in the Irish context is a Multi-Purpose Body. It is submitted that the Law Enforcement Model has not proven successful in Ireland and that the Policy Coordination Model is insufficient to address issues of such gravity. The OECD points out :

The obvious rationale for the establishment of any anti-corruption institution is to address a specific problem of corruption and to contribute to reducing corruption through a specialised institution. However, in democratic societies, traditional anti-corruption functions (detection, investigation and prosecution of criminal offences, ensuring transparency of public expenditure through financial control, securing open government through access to information and openness to civil society, preventing the conflict of interest, etc.) are usually available in existing institutions. However, these anti-corruption functions are scattered across many institutions, and there is not one single body, with a prominent name that indicates that it is responsible for fighting corruption. A specialised anti-corruption institution may be needed when structural or operational deficiencies among existing institutional framework do not allow for effective preventive and repressive actions against corruption.

It is submitted that the current system in Ireland is exactly that criticised in the above OECD report. Accordingly this paper proposes the establishment of a independent anti-corruption agency to have overall control of the anti-corruption regime in Ireland, addressing the issues outlined thus far. The following is intended as a broad outline of the purpose and function of the independent anti-corruption agency, the powers it would exercise and the operational framework necessary to achieve the desired results.

Ireland has been the subject of a number of reports and surveys examining corruption perceptions. Of particular note is the Special Eurobarometer Report on corruption conducted on behalf of the European Commission in 2013. One of the questions addressed in the Eurobarometer statistics is whether or not the general public are aware of their options in reporting corruption. The results indicate that we have at or below European average level of trust in the established institutions of the state (police, judiciary, media, elected representatives, etc.) For example, confidence in police is at 51%, compared with a 57% EU average, confidence in the justice system is at 7% compared with a 27% average. Of particular note is the exceptionally high confidence expressed in national ombudsman institutions to deal with instances of corruption (34% compared to a 12% EU average). This level of confidence is extraordinary, despite the fact that corruption is beyond the remit of many of these institutions. There is no dedicated anti-corruption ombudsman or agency in Ireland. That the public have trust in ombudsmen for addressing corruption matters is evidence that the creation of an anti-corruption agency would be welcomed and positively affect the perception that the state is effectively addressing corruption. The public are clearly receptive to the concept of a national ombudsman to address sectoral corruption. The creation of a independent anti-corruption agency to tackle corruption is likely to enjoy similar support.

¹ Specialised Anti-Corruption Institutions: Review of Models, OECD, 2008 p.34
<https://www.oecd.org/corruption/acn/39971975.pdf>.

PROPOSAL**Purpose of the Agency**

Corruption has been defined in a variety of ways. Some definitions focus on the exchange of some benefit between people, considering the fact of the exchange to be sufficient without needing to prove an undeserved benefit accruing from that exchange. Others focus on the notion of improper relationship, for example a person holding a position of power or influence over a person who can give them benefit. A further, more common understanding focuses on cause and effect, where an improper benefit was given in exchange for some other benefit.

There are difficulties with each of these definitions. The first definition defines corruption in a broad fashion, meaning that any interaction between two people could potentially be corrupt. The second definition can occur easily, inadvertently and often without the knowledge of the people who are supposedly corrupt. The third definition requires very clear proof which, given that corruption is inherently secretive, is unlikely to be easily uncovered.

It is proposed that the independent anti-corruption agency be given a broad remit to select situationally appropriate definitions. For example, where a person is accused of receiving an improper payment it must be shown that the improper payment was received but not that any undue benefit followed. However where a decision-maker is especially vulnerable to corruption, the very fact of a communication on a topic could be sufficient to prove corruption. The agency could then seek an additional penalty for corruption where the cause and effect type of corruption can be proven.

The agency can review, from time to time, the appropriate rules governing corruption and the circumstances in which particular definitions of corruption would be most appropriate.

The independent anti-corruption agency would take over the roles of a number of existing bodies. The mechanism by which this would be done will be specific to each of these bodies. There are those which would benefit from full incorporation and others which would continue to exist in their current form, though with ultimate oversight provided by the agency.

The criteria for deciding whether an existing body should form part of the new agency should be whether there is a major risk of corruption within their remit or, in the alternative, where the risk is minor, but the potential damage is large.

PROPOSAL

There shall be a periodic review of the remit of the Agency to determine if the scope of its powers are commensurate with its core objective.

Initially the core functions of the agency will be to:

- Operate a Standing Commission of Investigation
- Have full oversight of public procurement

In addition, the Agency shall assume the core functions of the following bodies:

- SIPO¹
- Office of the Director of Corporate Enforcement
- Registrar of Lobbyists

Appointment

The head of the independent anti-corruption agency should be appointed by and answerable only to the Oireachtas. The Government shall propose a list of no fewer than three candidates from which the Oireachtas may choose one candidate. In the event that none of the proposed candidates receive sufficient support the government will submit a further list of no fewer than three candidates for consideration.

The appointment shall be made by way of a vote in both houses of the Oireachtas. A candidate shall be deemed appointed provided they receive the support no less than 66% of the members of each house.

The qualifications should primarily relate to the character of the candidate though community, legal, business and political experience would be an advantage. The government shall also be free to propose candidates with relevant experience from other jurisdictions.

The head of the agency will be appointed for a term of seven years. Any outgoing head who confirms that he/she wishes to be reappointed for a further term shall have their name forwarded to the Oireachtas for consideration in addition to any other candidates submitted by the government.

¹ In respect of its anti-corruption mandate

PROPOSAL**Supervision**

The Oireachtas should have full supervisory authority over the operations of the agency, however this would not extend to the Oireachtas being authorised to order the commencement or the termination of any investigation and would not require the agency to disclose any information relating to ongoing investigations or the details of any investigation undertaken which resulted in no further action being taken.

Day-to-day liaison between the Oireachtas and the agency shall be conducted by way of a new Dáil committee, called the Public Interest Committee. The Government parties shall not constitute a majority of members on said committee and the committee shall have a chairperson who is a member of the opposition.

The agency shall be governed and supervised by a Board of Directors. The head of the agency shall be answerable to the board in respect of any, and all, activities conducted by the agency. The board will conform to the highest standards of corporate governance.

There shall be seven directors at any time. Every director shall be appointed by one of a list of prescribed bodies. The directors shall be appointed by, but not representatives of, these bodies. The directors shall be independent in the exercise of their duties. The independence of the directors shall be enshrined in statute. Upon consultation the list of prescribed bodies shall be compiled. It is envisaged that such a list will include, inter alia, the judiciary, trade unions, civil society groups and non-governmental organisations.

Directors shall be appointed for a term of four years and shall be eligible for re-appointment thereafter.

The head of the agency shall be removed from office only for stated misbehaviour, incapacity or bankruptcy and by resolution of both houses of the Oireachtas. No such resolution shall be considered by the Oireachtas unless it is requested to do so by an ordinary resolution of the board of the agency and by the Dail committee appointed to oversee the agency.

For the avoidance of doubt the head of the agency may voluntarily vacate his/her office.

The agency shall prepare and deliver an annual report to the committee on the workings of his or her office.

PROPOSAL

Finance

The agency shall be financed as part of the general budget allocated for the administration of the Oireachtas. The Oireachtas shall have the authority to allocate a portion of its own budget, based on the recommendation of the Public Interest Committee. The agency shall present accounts to the Oireachtas committee for approval and a forecast of expenditure prior to the issue of the government budget.

5. POWERS OF THE INDEPENDENT ANTI-CORRUPTION AGENCY

Consolidation

One of the first tasks of the agency should be to consolidate the existing corruption legislation and expand it to account for elements of corruption that are not already covered. For example, a robust and clear offence of trading in influence should be introduced in line with Article 12 of the Criminal Law Convention on Corruption¹ and measures to allow for the disqualification of persons convicted of corruption offences from holding public office, as recommended by Article 30(7) of the United Nations Convention Against Corruption.

A time limit of 12 months will be set for the completion and passing of this legislation.

Legislative Proposal

The agency shall have the power to lay draft legislation before the relevant Oireachtas committee to be considered by the Oireachtas as a whole.

Investigation

The agency shall have the power to commence an investigation into any allegation of corruption of which it is informed. Further it shall have the power to commence an investigation without an initiating complaint where it has reason to believe corrupt practice is occurring.

For the avoidance of doubt, an allegation of wrongdoing may come from any source and may be made in confidence at the request of the informant. Safeguards will be put in place to prevent vexatious and petty complaints.

Subsidiary powers necessary for the undertaking of an investigation shall be granted to the agency, including the power to apply for a search warrant, the power to seize evidence, the power to apply for disclosure, the power of arrest, the power to interview witnesses, the power to take sworn testimony, the power to access bank records, and the power to compel witnesses to attend interview.

¹ Note this proposal is part of the Criminal Law (Corruption) Bill, 2012 still before the Oireachtas.

**POWERS OF THE INDEPENDENT
ANTI-CORRUPTION AGENCY****Prosecution**

The agency shall have the power to prosecute offences before the District and Circuit Court. Where an offence is of sufficient gravity that it is believed that only the jurisdiction of the Central Criminal Court is appropriate then such cases shall be brought on the agency's behalf by the Director of Public Prosecutions.

Recommendation

Upon completing an inquiry and where no prosecution follows the agency shall make one or more of the following orders:

- No concern - To be issued to all parties involved in the investigation in relation to aspects of the investigation where nothing uncovered during the course of the investigation formed a prima facie case of corruption;
- Concern - Where information uncovered during the course of the investigation led the agency to the belief that, while corruption was not proven, there is evidence that dealings had fallen below the standard of best practice;
- Caution - Where evidence was present that, were the party investigated to continue in the manner discovered then a prosecution might result in the future;
- Warning - Where there was sufficient evidence of a prima facie case of corruption to warrant a prosecution however under all the circumstances it would not be appropriate to prosecute.

For the avoidance of doubt, in the event of an unsuccessful prosecution any of the above orders may be issued by the agency.

The purpose of the orders above is to offer guidance to the subject of the investigation so that they might improve upon previous practice. To that end, any order shall be accompanied by reasons for the decision and recommendations which would assist the party in the future. It shall be open to the party to request further information and/or clarification of matters contained in the order.

**POWERS OF THE INDEPENDENT
ANTI-CORRUPTION AGENCY****Systemic Inquiry**

Sectors exercising a significant function in public life, be it in the provision of services, the carrying on of trades and professions or the administration of public funds, may be the subject of an inquiry by the agency into that sector for the purpose of improving transparency, limiting the opportunity for corrupt practice and reducing the perception of corruption.

The agency shall also have the capacity to undertake thematic investigations where similar issues arise across multiple sectors.

The agency shall, on the completion of such a Systemic Inquiry, be empowered to issue a public report into that sector.

For the avoidance of doubt, it shall be open to the representatives of a sector to request a Systemic Inquiry for the purpose of safeguarding their standing in public life.

Advisory Function

The agency shall have an advisory function in relation to certain state agencies. The advisory function will comprise of two distinct, but related, roles.

First, the agency shall offer support and guidance to these organisations in the exercise of their statutory functions.

Secondly, the agency shall ensure that the organisations conform to the highest standards of corruption prevention and detection by way of periodic audits of internal procedures.

The advisory function shall apply to the following bodies¹:

- Garda Síochána Ombudsman Commission.
- Comptroller & Auditor General
- Defence Forces Ombudsman.
- Garda Bureau of Fraud Investigation.
- A new Electoral Commission
- Professional Bodies

¹ The Social Democrats will shortly be bringing forward proposals for the establishment of a new Electoral Commission. It is proposed that the agency will have an advisory function in relation to this body.

**POWERS OF THE INDEPENDENT
ANTI-CORRUPTION AGENCY**

The agency shall retain an advisory function in relation to other organisations charged with oversight of professions. For example, the agency shall have the capacity to conduct Continual Professional Development, draft Codes of Ethics and any other advisory or consultative function which can reasonably be said to form part of the agency's remit.

In relation to Ministerial appointments the Agency shall have both a review and advice function. Upon the request of the Dail Public Interest Committee the Independent Anti-Corruption Agency may investigate the circumstances surrounding the use of such Ministerial discretion and will lay the results of any such investigation before the house. The Agency shall publish and maintain guidelines for appointments to public boards. Similarly, the Agency shall advise on transparent criteria, on which decision on the spending of public money should be based.

Confidential Recipient

For the purpose of current whistle-blowing legislation the agency shall constitute a confidential recipient in all matters. Any person may communicate with the agency as a confidential informant and their information may cause an inquiry or investigation regardless of the circumstances under which the person communicating with the agency acquired the information.

Immunity from Prosecution

Where a person offers information as a confidential informant, that information will not form the basis of any prosecution to be brought against the person providing the information. Further, where the assistance of the informant is sought in relation to other matters the agency shall have the capacity to grant immunity from prosecution in order to aid the presentation of information.

Interfering with the proper function of the agency, including knowingly giving false information to the agency, shall be an offence and prosecuted by the Director of Public Prosecutions. The staff of the agency shall enjoy protections, in the course of their employment, similar to those granted to the staff of the Criminal Assets Bureau and GSOC.

6. APPROACHES IN OTHER JURISDICTIONS

There are numerous jurisdictions with dedicated anti-corruption agencies. The following examines three of them, chosen to give an overview of the types of organisations which exist and with regard to nations who share a broadly similar corruption profile and economic development status to Ireland. We have deliberately excluded examination of agencies established in states where corruption is endemic or who regularly feature towards the bottom of Transparency International's Corruption Perception Index.

The OECD identifies three types of Anti-corruption organisation. These are;

1. Multi-purpose bodies.
2. Law enforcement bodies.
3. Policy, co-ordination and prevention bodies.

Recent international treaties against corruption require their member states to establish specialised bodies dedicated to fighting and preventing corruption¹. The United Nations Convention against Corruption requires the existence of two types of anti-corruption institutions: (a) a body or bodies that prevent corruption (b) a body specialising in combating corruption through law enforcement. Both types of institution may exist within a single organisation.

Both the United Nations and the Council of Europe anti-corruption conventions establish criteria for effective specialised anti-corruption bodies, including independence, specialisation, adequate training and resources.

¹ Article 20 Council of Europe Criminal Law Convention on Corruption, Article 6 and 36 United Nations Convention Against Corruption.

**APPROACHES IN
OTHER JURISDICTIONS**

Multi-Purpose Bodies

One of the first and best known specialised anti-corruption institutions, the Hong Kong Independent Commission against Corruption, was established in 1974. The Commission has contributed significantly to Hong Kong’s success in reducing corruption and was the inspiration for many countries to merge these two roles into a single entity.

The OECD identifies four areas of responsibility for a specialised anti-corruption body¹.

- Policy development, research, monitoring and co-ordination.
- Prevention of corruption in power structures.
- Education and awareness raising.
- Investigation and prosecution.

VICTORIA, AUSTRALIA

The State of Victoria in South-Eastern Australia has recently established a multipurpose anti-corruption body, in the process amalgamating several existing organizations. The body, known as the Independent Broad-based Anti-corruption Commission (IBAC), has been in existence since 2012. While the body is relatively new it is a prime example of the multipurpose approach and the similarities between the state of Victoria and Ireland mean that the example is instructive.

The Commission was established by the Independent Broad-based Anti-corruption Commission Act 2011² (as amended). IBAC’s jurisdiction is broad covering 3,600 public sector agencies and bodies, 79 local councils, members of Parliament and the judiciary, and Victoria Police. The powers provided for by the IBAC Act are similarly extensive. IBAC can exercise entry, search and seizure powers, compel interviews and in certain circumstances it can exercise prosecutorial powers. The

Commissioner, currently Stephen O’Byrne QC, is an independent officer of the Victoria Parliament and is not subject to the direction or control of the local or federal government.

IBAC’s varied roles fall into five main categories.

- Receiving, assessing and referring complaints and notifications about Victorian public sector corrupt conduct or police personnel misconduct.
- Identifying, exposing and investigating corrupt conduct by public bodies or officers and police personnel misconduct.
- Preventing corruption and police personnel misconduct through advice, training and education.
- Making recommendations or tabling reports in Parliament following an investigation.
- Acting as a central clearing house for protected disclosures.

¹ Specialised Anti-Corruption Institutions: Review of Models, OECD, 2008 p.10-11 <https://www.oecd.org/corruption/acn/39971975.pdf>

² [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/DDE300B846EED9C7CA25761600A3571/808D6AEF9BF8EFA9CA257B6C0023E595/\\$FILE/11-66aa013%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/DDE300B846EED9C7CA25761600A3571/808D6AEF9BF8EFA9CA257B6C0023E595/$FILE/11-66aa013%20authorised.pdf)

APPROACHES IN
OTHER JURISDICTIONS

In 2013-2014 IBAC assessed 4,860 allegations, involving both police and public sector personnel. Three hundred and fourteen of these allegations were deemed to be protected disclosure complaints. Of that number the vast majority were found to contain no grounds for further investigation or were passed on to other agencies for further examination. Only twenty four investigations commenced in circumstances where the Commission judged the allegations to have reached the threshold of 'serious corrupt conduct' or 'police personnel misconduct'.¹

Of particular note is IBAC's Operation Fitzroy², a wide ranging and extensive investigation into procurement practices in the Department of Transport and Public Transport Victoria. The investigation uncovered 25 million dollars of public funds which had been misappropriated.

As a result of the operation more than 100 charges have been laid against nine individuals, including two former civil servants, and one company.

The Commission found that the individuals had "corruptly awarded contracts and pocketed public money which was allocated for public infrastructure. As a result, some public projects were not completed or were completed to an unsatisfactory standard. In some cases, invoicing was inflated and the excess cash went to those involved."

The cost to the exchequer of IBAC during its first year of operation was 27 million Australian Dollars (circa 17.1 million euros).³

¹ Figures are drawn from the IBAC Annual Report 2013-14 which can be viewed at <http://www.ibac.vic.gov.au/publications-and-resources/article/annual-report-2013-14>

² The criminal charges preferred as a result of Operation Fitzroy are currently before the courts. As a result the Commission's report into the matter has been removed from their website. Upon the conclusion of the criminal prosecutions the report will appear at <http://www.ibac.vic.gov.au/publications-and-resources/>

³ These figures are illustrative only and are provided to give a broad idea of the cost of the Commission to the Victoria taxpayer. As with all such agencies there are numerous qualifications to the headline figure.

APPROACHES IN
OTHER JURISDICTIONS

Law Enforcement Bodies

The law enforcement model takes different forms and can be implemented in detection and investigation bodies such as a national police service or in prosecution bodies. This model can also combine specialised anti-corruption detection, investigation and prosecution in one body. Sometimes the law enforcement model also includes elements of prevention, co-ordination and research functions, but these functions are generally ancillary to the investigation and prosecution of specific offences. Examples include Spain (Special Prosecutor’s Office for the Repression of Economic Offences Related Corruption), Croatia (Office for the Prevention and Suppression of Corruption and Organised Crime), Romania (National Anti-Corruption Directorate), and Hungary (Central Prosecutorial Investigation Office).

UNITED KINGDOM

The United Kingdom’s Serious Fraud Office (SFO) was established in 1987 as an independent public institution within the criminal justice system of the United Kingdom. It is under the oversight of the Attorney General and its mandate is to investigate and prosecute serious and complex fraud in order to maintain confidence in the integrity of business and financial services in the UK. The SFO only focuses on serious and complex cases. The distinctive feature of the SFO’s approach to investigation is the use of multidisciplinary teams. Each case is allocated to a team of lawyers, financial investigators, police officers, IT and other support staff. The Serious Fraud Office is the lead agency in England, Wales and Northern Ireland for investigating and prosecuting cases of domestic and overseas corruption (the SFO does not have jurisdiction in Scotland.)

The SFO arose out of public concern at the investigation and prevention of serious, large scale fraud offences. In 1983 the government commissioned a report (commonly called the Roskill Report) into the re-organisation of fraud and corruption investigations.

The SFO was established as an independent Government Department headed by a Director who exercises powers under the direction of the Attorney General.

The SFO does not investigate every offence referred to it. A complex vetting procedure is in place to determine if the expertise of the Office is required. Typically cases of significant monetary value where advanced knowledge of commerce or international markets is required will be accepted and investigated. If a case does not require the skills of the SFO it is remitted to the local police forces for investigation. 20-30 cases are opened by the SFO every year.

The investigation powers of the SFO are described in the Criminal Justice Act, 1987. These include the power to require a person to answer questions or otherwise furnish information, require production of documents and to apply to the court for a search warrant. In addition to these stated powers the officers of the SFO fall under the definition of law enforcement officer for the purposes of other pieces of legislation.

**APPROACHES IN
OTHER JURISDICTIONS**

While the SFO co-operates closely with the police on a case-by-case basis, a strict division is maintained between the two. The SFO is granted power to compel answers to its enquiries. Failure to answer an inquiry to the satisfaction of the Director is an offence. The power is supervised by the court, but is viewed as a curtailment of the right to silence and therefore incompatible with the traditional

role, and further powers, of the police¹. In 2014-15 the SFO had a conviction rate of 78% and secured confiscation orders over £26.5 million worth of assets, and recovery of £13.5 million.

Policy, Co-Ordination And Prevention Bodies

This model includes institutions that have one or more corruption prevention functions. They can be responsible for research; assessing the risk of corruption; monitoring and coordination of the implementation of the national anti-corruption strategies; reviewing and preparing relevant legislation; monitoring the conflict of interest rules for public officials; elaboration and implementation of codes of ethics; assisting in the anti-corruption training for officials or issuing guidance and providing advice on issues related to government ethics. Examples include Albania (Anti-corruption Monitoring Group), Malta (Permanent Commission against Corruption), Montenegro / Serbia and Montenegro (Anti-corruption Agency), the United States (Office of Government Ethics) and India (Central Vigilance Commission)

FRANCE

The French Central Service for Prevention of Corruption (Service Central de Prévention de la Corruption – SCPC) was established in 1993. It is attached to the Ministry of Justice. The SCPC is a relatively small body but it has diverse expertise as it brings together seconded experts from various judicial and administrative bodies. The SCPC collects information and provides independent expert advice on corruption risks and corruption cases under investigation.

Most requests are from local authorities. The SCPC increasingly provides training and assistance on codes of conduct for public and private enterprises.

The SCPC was established by law n° 93/122 of 29 January 1993 “On Prevention of Corruption and Transparency of Economic Life and Public Procedures” and the Decree n° 93/232 of 23 February 1993. The law establishes the SCPC as a service under the responsibility of a senior judicial officer (either prosecutor or judge).

¹ The power to compel answers is thought necessary so that professionals such as accountants, who have an ethical obligation of confidentiality, can answer questions without breaching their obligation to their clients.

**APPROACHES IN
OTHER JURISDICTIONS**

The enabling legislation was the subject of review by the French Constitutional Court who found that many of the powers granted to SCPC were in violation of the French Constitution having insufficient regard to the separation of powers. As a result many of the intended roles of the body were abandoned. The service was not granted investigatory powers or powers to request information. The SCPC is attached to the Ministry of Justice and reports to the head of the Cabinet of the Minister of Justice. Neither the government nor the Minister of Justice can give instructions to the SCPC and its members.

The main functions of the service are as follows:

- Centralise information necessary for the detection and prevention of passive and active corruption offences, trafficking in influence, collusion, illegal use of public function, failure to respect open and equal access to public procurement.
- Provide assistance to judicial institutions investigating, prosecuting and adjudicating corruption cases, upon their request.
- Provide opinions to administrative bodies to prevent corruption, upon their request.

The SCPC has no powers to investigate criminal or administrative cases. If criminal wrongdoing is uncovered in the course of its investigations it must pass the information to the public prosecutor and cease involvement.

The list of bodies who can request an opinion or advice from the service is limited and enumerated in the legislation. On average, SCPC receives 55 requests a year from judicial or administrative authorities to either provide an independent, expert opinion or assistance in a specific case under investigation. According to numerous annual reports issued by the service the number of requests is significantly below operational capacity.

The SCPC's staff comprises about 15 persons: the head of the service, the secretary general, 8 to 12 counsellors. The staff members are judicial officers or public servants. The counsellors working for the SCPC are seconded from various state institutions, either judicial or the state administration. The SCPC has its own budget within the Ministry of Justice. The budget in 2005 was 375,000 EUR.