

The UK Bribery Act: how will you act?

Briefing on Bribery Act seminar – 12 April 2011

CIMA, together with St Paul's Institute, held a seminar to discuss the responsibilities financial management has in implementing anti-bribery guidance. With the UK Bribery Act being enforced from July 2011, three months after government guidance was released in March, organisations should act now to prepare and adapt systems accordingly.

Bringing together the finance, legal and ethics community, the expert panel shared their views with a professional audience. Held in St Paul's Cathedral, it was an appropriate venue to discuss anti-bribery as it is a significant monument built at a time when corruption in London was rife.

Context

The Act provides UK law enforcement with a sound legal framework to prosecute offenders. It has far reaching implications for every organisation doing business in the UK. It includes a new corporate offence of failing to prevent bribery. A commercial organisation must show that it has adequate procedures in place. As well as being a requirement, this can also form the basis of a defence to the offence of failing to prevent bribery. General offences include:

- Offering or receiving a bribe.
- A special offence of bribing a foreign corrupt official.
- A corporate offence of failing to prevent bribery.

Key messages

- Anti-bribery is good for business in the long term.
- There is global attention on the subject and many national and supranational laws and regulations – the UK is not acting alone, nor acting first.
- Crest of wave – anti-corruption initiatives growing.
- Need to assess risk, mitigate risk and do so with proportionality.
- Need to act now – have to be ready for enforcement of the Act. Policies and procedures should be fit for purpose.
- There may be cost in the short term, but it is for long term return and supports sustainable business models.
- Leadership from the top will be crucial and creating an anti-bribery culture needs active support from the board down.
- The Act recognises difficult areas, such as situations where people might be under personal duress or threat.
- The key is always doing the right thing – as professionals, management accountants are trained to do it and have a code of ethics to follow.

Discussion during the evening focused on interpretation of the Act and application of guidance. Issues for business included facilitation payments in times of crisis (personal risk) and interpretation of fast-tracking services. In such cases of payments in crisis where life is at risk, both the context and the level of duress would always be assessed as well as how the matter is handled. In relation to 'fast-tracking' the existence of formally documented processes may show that proper business practices exist. When doing business via agents and third parties, adequate procedures (which are required to be in place) and proportionality are key to ensure that no bribery is taking place. Due diligence on whoever you are working with and anti-bribery requirements in contracts, is not only good business sense but will also be necessary to protect you from the actions of third parties you employ to act on your behalf. The Act itself and the guidance around the Act can help guide companies on best practice and benchmarks.

The last two decades have seen a great shift in awareness and dedication to fighting corruption, through the OECD (Organisation for Economic Co-operation and Development), United Nations treaties and now the G20, together with the ongoing activities of campaigning NGOs around the world. Both legislation and the business response to anti-corruption are now intensifying. Transparency International, a leader on anti-corruption advocacy worldwide, only came into being in 1993. The OECD Anti-Bribery Convention was developed in 1997 and the United Nations Convention against Corruption was first signed in 2003. Therefore, the UK Bribery Act is being introduced on the crest of a wave.

Combination of increased global regulation at both national and supranational level, greater public scrutiny of business as a result of questionable trust and a more intrusive press, together with the rise of social media all serve to raise standards. The Act creates less cost and disruption than many commentators imply, as ethical standards have already moved a long way in the right direction. It should be remembered that most of the illegal acts in the Bribery Act are already illegal. Implementation should not be a tick box exercise but a genuine cultural shift and those who merely write policies without embedding them will be caught out. Policies and practices have to be in place and seen to be implemented.

It is recognised that the large multinationals have more weight to stand up and say no to bribery in practice. Therefore, for smaller organisations, collective action between companies on the ground in high risk geographies may be needed as a stand against bribery and corruption. The more companies, sectorally and cross-sectorally, that stand together the better as this helps to level the playing field and organisations should be encouraged to seek government support wherever possible. Support should also come from trade and professional associations worldwide.

Ask yourself – how does your organisation do business and with who? Is your organisation at risk? Do you have appropriate guidelines in place for a variety of circumstances? Is there a widespread understanding of why they exist? These are the key questions which must be led from the top and filtered all the way through and across organisations.

Summary of panellists' positions

Roderick Macauley, Bribery Act Implementation Manager, Ministry of Justice

The Act is general in scope but also incorporates a specific focus on commercial bribery. It recognises not only the global cost of bribery and the significant costs to doing business but also bribery's reputational damage both to individual firms and to UK PLC. The Act takes a robust approach providing a new modern legal landscape that has global reach. It does not establish a regulatory regime, there are no compliance or monitoring requirements and overall proportionality is key.

What is critical is the developing and rolling out of ethical standards by the private sector itself. The Act is designed to encourage a risk based approach and a 'prevention' rather than 'protection' mindset. This is particularly relevant regarding provision seven of the Act: 'failure of commercial organisations to prevent bribery'. Businesses that turn their backs on bribery do reap benefits: enhanced reputation, costs savings and sustainable business opportunities. Government guidance, offering an explanation of government policy, a principle based approach to the adoption of bribery prevention procedures, and illustrative case studies has been published in order to offer practical assistance to businesses. Through robust offences, a clear corporate defence and the guidance the Act achieves the right balance between the needs of justice and the legitimate concerns of business operating in a global economy.

Claire Ighodaro FCMA, CBE, Independent Director and trustee

It takes both the briber and bribed for corruption to occur. Businesses therefore need to break out of the self-perpetuating cycle of corruption – taking responsibility for ensuring the right environment without being overburdened by regulation. The penalties for not creating or building on an anti-bribery culture are, through the Act, severe. CIMA qualified professionals are already signed up to the CIMA Code of Ethics, a global code which encompasses all the behaviours the Act is seeking to instil. CIMA members are well placed to take on these challenges, driving through the oversight of risk assessment and not only ensuring there are proportionate procedures but also that they are communicated, monitored and reviewed. Undoubtedly there is a challenge for business and there are some that feel compromised by a need to compete. As governments increasingly push for a level playing field and fair competition for global business, business should continue to be innovative in a framework of transparency. Corporate culture is key, and this starts with the role of the board and other levels of leadership to enable and empower finance professionals to successfully influence ethical practice.

Robert Barrington, Director of External Affairs, Transparency International

The World Bank estimates the amount of bribes paid annually to be US\$1trillion, so the cost to the global economy is unquestionable. Studies have also shown that bribes and corruption can take 10% off your bottom line and when looking at the costs of economic development there have been studies that show between 20% and 30% of development aid funds go astray. Therefore having robust laws in place to make corruption illegal are very important and the UK Bribery Act adds to this. Many global countries have strong legislation and UK is now in line with its OECD commitments. The Foreign Corrupt Practice Act has been in place for over 30 years.

Despite some concern that the UK Bribery Act will disadvantage British companies, this is not the case. There is rapidly growing focus around the world on these issues, with the G20 having now adopted fighting corruption as one of its priorities – an issue they will report more on in November 2011. Overall, curtailing corruption is good for society and therefore good for business. For some firms not yet prepared there may be some short term 'pain' and investment, but there is a need to remember that this should be proportionate and should lead to sustainability of the organisation. It is important to remember that it is not an 'anti-business' but an 'anti-bribery' act. Bribery is an evil that the global community should seek to eradicate and those who bribe should be caught out.

Gavin Ralston, lay canon, St Paul's Cathedral and Global Head of Product Schroder Investment Management

Schroders as a global asset management firm has two-thirds of their revenue coming from outside the UK. A risk based assessment was carried out internally, using the TI index in preparation for the Act. This identified the six highest risk countries they were doing business in. In response, ultra-high standards and procedures were built around their work and activities in these particular markets. It should be recognised that the UK Act is not a radical change but instead works with the grain of existing regulatory principles. Over the last few decades the context of business has changed. For example Schroders' like many companies, has a gifts and entertainments policy: up to a value of £25: staff can accept; £25 – £250: needs senior manager sign off; over £250: needs sign off by compliance officer, with an assumption it won't be permitted.

This is not new – codification is now much more commonplace and many firms already have policies in place reflecting ethical business practice that in turn reflects their culture. The use of third party firms presents considerable risks, with less direct control. This is when due diligence is essential and the guidance helps lay out what to do. Ultimately beyond the law, market sanctions work powerfully as a deterrent. Get caught up in a scandal, share prices and ongoing reputation are badly affected as those charged with corruption have found. If Schroders was caught in such a way the effects could be catastrophic, not least that they would immediately lose all their public sector work. New legislation should not require massive change, it works with the grain of where companies already are – what it requires is already in line with best practice.

The UK Bribery Act & guidance

The Ministry of Justice guidance sets out six principles for planning, implementing, monitoring and reviewing in relation to anti-bribery activities:

1. Proportionate procedures
2. Top level commitment
3. Risk assessment
4. Due diligence
5. Communication
6. Monitoring and review.

The guidance outlines a risk-based approach to adopting adequate procedures, proportionate to the risks faced by each organisation. Different procedures will be appropriate depending on the size of the organisation, the industry sectors and jurisdictions in which it does business, as well as the nature of its business partners and transactions.

For the full guidance and start-up guide see: <http://www.justice.gov.uk/guidance/bribery.htm>

For more information on the Act see: <http://www.justice.gov.uk/publications/bribery-bill.htm>

Further reading

Further CIMA reports on anti-bribery – ethics and sustainability see: www.cimaglobal/ethics

Other useful links

Foreign Corrupt Practices Act: www.justice.gov/criminal/fraud/fcpa

Transparency International: www.transparency.org

OECD: www.oecd.org

G20: www.g20.org

St Paul's Institute: www.stpaulsinstitute.org.uk

CIMA and St Paul's Institute would like to thank the panellists and Jeff Kaye of Global Witness for chairing. Neither these individuals nor the organisations they represent are responsible for the contents of this paper. The panel for the seminar were:

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Robert Barrington, Director of External Affairs, Transparency International
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