



CIMA

Chartered Institute of
Management Accountants

The Bribery Act 2010 and what it means for CIMA members and businesses worldwide

*Bribery is a serious crime that destroys the integrity,
accountability and honesty that underpins ethical standards
both in public life and in the business community.*

Ministry of Justice

in association with



global witness

About CIMA

CIMA, the Chartered Institute of Management Accountants, founded in 1919, is the world's leading and largest professional body of management accountants, with 172,000 members and students operating in 168 countries, working at the heart of business. CIMA members and students work in industry, commerce and not for profit organisations. CIMA works closely with employers and sponsors leading edge research, constantly updating its qualification, professional experience requirements and continuing professional development to ensure it remains the employers' choice when recruiting financially trained business leaders.

CIMA is committed to upholding the highest ethical and professional standards of members and students, and to maintaining public confidence in management accountancy. Details of CIMA's activities on standards and ethics can be found at www.cimaglobal.com/ethics

High ethical and professional standards are an integral part of the CIMA qualification.

Finance and accounting is the language of business transactions and accountants have long been the interpreters of this language. Ensuring that information is accurate and transparent has never been more important.

Jeff Kaye FCMA

Global Witness, Director,
Finance and Resources

www.globalwitness.org

CIMA members and students worldwide have a responsibility to be fully aware of the implications of the UK Bribery Act, its main requirements and what the law will mean in practice for CIMA members working for UK businesses and their subsidiaries overseas.

The background

On 25 March 2009, UK Secretary of State for Justice Jack Straw announced a new Bribery Act. The Act received Royal Assent on 8 April and will become law – coming into effect in stages between June and October 2010. The new law will have wide implications for the UK industry and for accounting professionals worldwide.

It is generally assumed bribery and corruption doesn't exist in UK business. The UK is currently ranked **17th** out of 180 countries on the Transparency International's '**Corruption Perception Index**' - however this is a deteriorating position.

Even if the situation at home is reasonable, the UK is a major exporter and is present in many industries where bribery and corruption may be seen to be endemic. UK companies and subsidiaries are present in many overseas countries which are well down the Corruption Perception Index. Many CIMA members and students currently work for organisations which operate in a number of those countries.

The new Bribery Act comes after criticism from the **Organisation for Economic Co-operation and Development (OECD)** on Britain's anti-corruption protocols - the impact of which is still being felt by UK exporters. The World Bank estimates more than **£1,000bn** is paid annually in bribes worldwide and many industries that UK business is in – such as aerospace and defence, construction and extractive industries – are known bribery 'hot spots'.

This is not just a UK issue. The US has its **Foreign Corrupt Practices Act (FCPA)** in force since 1977 and that Act was used to bring BAE Systems to account in the USA. This means that accounting professionals need to understand the laws wherever they work.

The Bribery Act which has **39 recommendations**, and repeals existing century-old UK bribery laws, which contain a combination of common law and statutory offences, will lead to changes wherever a UK business operates (directly or through its subsidiaries); it will have a global reach. The Act offers a clearer set of statutory offences. It is aimed at **simplifying the UK process of bribery prosecution** through a combination of extra territorial reach and the introduction of a new offence targeting businesses which fail to prevent bribes paid on their behalf. Companies are now being advised to review their business ethics compliance programme to ensure they have **robust risk management processes** in place. This includes checking they have appropriate insurance cover and have reviewed the liability clauses in the employment contracts of both directors and employees.

What are the offences?

Current laws enable prosecution primarily to take place where bribes have been paid to those in public office who are in a position to influence or act contrary to the norms of honesty and integrity. The new Act introduces a comprehensive scheme of offences which will allow a more robust and effective response to combating bribery in the UK and elsewhere.

The new offences cover the 'briber' and the 'bribed' as well as bribery of a foreign public official. The Act also introduces a new corporate offence of failing to prevent such bribery taking place. The sentence can be up to ten years **imprisonment** for an individual and/or an unlimited fine. Senior management could be deemed to be personally liable if the corporate body commits an offence where the 'senior officer' was a participant in the offence (1-3 below) or knew of the offence. Businesses can face an **unlimited fine**.

The four offences under the Act are:

1. **Bribing another person** (the 'active offence') – where a financial or other advantage is offered to another person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity.
2. **Being bribed** (the 'passive offence') - where a person receives or accepts a financial or other advantage to perform a function or activity improperly.
3. **Bribery of a Foreign Public Official (FPO)** - where a person directly or through a third party offers, promises or gives any financial or other advantage to an FPO in an attempt to influence them in their capacity as a FPO and to obtain or retain business, or an advantage in the conduct of business.
4. **Corporate offence: failure to prevent bribery** - a UK commercial organisation (incorporated or acting as a partnership in the UK or carrying on business here) can be found guilty of bribery where someone associated with the organisation is found to have bribed another person with the intention of obtaining or retaining business or an advantage in the conduct of business. Such persons 'associated' with the organisation could include employees, agents, sub-contractors and joint-venture arrangements (amongst others). The bribery could take place anywhere in the world.

From an organisation's perspective, there are some clear requirements. A defence against charges of bribery will occur if the company can show that it has a process of training and instruction which should ensure that bribery will not take place. The Government has promised to issue **guidelines** on best practice to **help companies** set up processes that will minimise bribery taking place and therefore any charges being applicable. These guidelines may take some time to develop, during which time industry will be asked to comment and **best practice** processes will be considered. This provides for a period after enactment when guidelines may not exist and when companies are at risk or when prosecutions may be delayed. It should not be assumed that the latter will be the case.

Impact for CIMA members and students

The impact of the new Act for organisations and accounting professionals are as follows.

1. Organisations – the furore over BAE Systems, the halting of SFO investigations and the eventual rulings in the USA and the UK show only a small element of the scale of the problem. Organisations operating in the UK now have to prepare thoroughly for the potential consequences of the UK taking bribery and corruption extremely seriously.

This means that **processes** have to be employed that (a) **prevent bribery and corruption** and (b) show clearly that the **whole organisation** has such processes in place should any take place as it is a defence to prove that the organisation had '**adequate procedures**' in place to prevent the act taking place. The Secretary of State has to issue 'guidance about procedures that relevant commercial organisations' can put in place to prevent such acts. There is no timeframe for this or for organisations to implement changes or introduce new procedures. For best in class companies, this will be unlikely to be a problem. For others, there is a **need to evaluate** risks and processes. For those involved in high risk industries such as defence and aerospace, extractive industries and construction and/or operating in countries low down on the corruption index, this is a time for real reflection. As risk of falling foul of the law has now increased materially, business cannot be 'as usual' for any organisation operating in the UK.

2. **Accountants** - for the guardians of the finances, this is a very important time. While it is the lawyers that have been working on the Act, deciphering the likely outcome and who may well be employed in organisations to ensure that the processes are adequate, it is in the **finance area** that the **potential for change** may well be most in evidence including the opportunity to reinforce ethical conduct. Accountants will have to put their professional training to the best possible use; **their ethical responsibilities are crucial**.

Accountants are key to the development of both risk reviews and of processes which can be held to be 'adequate'. In addition, accountants have the 'privilege' of ensuring that financial systems are suitably managed to ensure that dubious payments cannot be made and/or dubious systems not set up. This places a considerable onus on the finance director or equivalent of any company operating in the UK and doing business overseas to ensure that the processes in place to manage financial transactions are sufficient. It places a similar onus on all accountants working in some organisations. The accountant is a qualified professional and it should be assumed that **qualified accountants meet the test as senior personnel – liable under the Act**.

Whilst guidelines are still to be provided by the Government, accountants working in commercial organisations need to ensure that supervision over financial transactions in all countries in which they are operating is adequate. There should be **adequate training** for all staff in those countries, authorisation procedures have to be thorough and governance in place – sufficient monitoring so that any dubious transactions can be seen and reported on to senior management.

Action plan

CIMA members working in any commercial organisation should consider whether their company:

1. Operates outside the UK?
2. Operates in any high-risk (to bribery and corruption) areas such as defence and aerospace, construction, extractive industries?
3. Operates in any country which is well down the Corruption Perceptions Index?
See www.transparency.org/cpi
4. Has procedures in place which ensure that it cannot be guilty of any bribery and corruption?

If the answer to any of questions 1-3 is 'yes' (especially where either 2 and/or 3 apply) but the answer to 4 is 'no' or 'unsure', then CIMA members should work within their own organisation to ensure that adequate procedures are put in place, by raising this with their line manager, or if a board member then with the board.

CIMA's **Code of ethics** should be the background to any work - based on the 'threats and safeguards' approach. As this suggests, where the threat (risk) is high, the safeguard needs to be developed. In the case of bribery and corruption, there is not just an ethical risk or threat. The threat is now a legal one with a penalty on conviction of the most serious offence of up to ten years imprisonment.

The code along with other ethics resources and support tools can be found at www.cimaglobal.com/codeofethics

Useful definitions (Serious Fraud Office)

- **Bribery** - Giving or receiving something of value to influence a transaction.
- **Illegal gratuity** - Giving or receiving something of value after a transaction is completed, in acknowledgment of some influence over the transaction.
- **Extortion** - Demanding a sum of money (or goods) with a threat of harm (physical or business) if demands are not met.
- **Conflict of interest** - Employee has an economic or personal interest in a transaction.
- **Kickback** - Portion of the value of the contract demanded as a bribe by an official for securing the contract.
- **Corporate espionage** - Theft of trade secrets, theft of intellectual property, or copyright piracy.
- **Commission/fee** - Used by a UK company or individual to obtain the services of an agent/agency for assistance in securing a commercial contract.

**Chartered Institute of
Management Accountants**
26 Chapter Street
London SW1P 4NP
United Kingdom
T. +44 (0)20 7663 5441
E. cima.contact@cimaglobal.com
www.cimaglobal.com



CIMA is proud to be a Gold Sponsor

RT061V0710