

## The Bribery Act

Since the introduction of the Bribery Act in 2010, what changes have taken place in your organisation? Has your internal audit function been the conscience of business ethics of potentially complicit in corruption?

This emotive statement is intentional. There is no plausible argument for inaction regarding this topic. As a chief audit executive (CAE) would you accept excuses of 'resource issues', 'didn't think it was material' or 'not my responsibility' from the business? No, and nor should it be accepted of internal audit when it comes to the inclusion of anti-bribery and corruption (ABC) on the audit plan.

---

## Not guilty!

Had the statement been on social media there would no doubt be legions of defensive CAEs proclaiming with angry faces about readiness audits, programme reviews, risk assessments and compliance checks. Perhaps so, but there would also be those hoping the audit committee chair hadn't seen the post, those who had considered ABC irrelevant for the organisation, where other priorities saw it fall into an assurance gap or it was a one-off audit that's never been repeated.

2017 saw senior executives imprisoned, corporates fined, continued investigations and headlines that included some big corporate names. Cases can be read on the [Serious Fraud Office \(SFO\)](#) website. Notwithstanding confidence in current activities, it is always beneficial to revisit the legislation and consider the risks afresh.

---

## Legislative requirements

In 2011 the UK made an unequivocal stance in its commitment to the 1997 OECD anti-bribery convention. Internationally, the Bribery Act is exemplified as being amongst the toughest legislation to have been introduced making individuals and companies liable for offences that occur domestically and overseas.

The institute has previously produced a [legislative overview](#) and detailed [guidance](#) (IIA Global also produced [guidance](#)) which this paper does not intend to repeat aside from the following concise summary:

- Act applies to individuals (British nationals) and organisations operating anywhere in the world
- Offence:
  - To receive a bribe
  - To offer a bribe
  - To offer a bribe to a foreign public official
  - Failure to prevent bribery
- No exemption for unlawful cultural practices such as facilitation payments
- Corporate defence relies on proportionate procedures and evidenced awareness programmes
- SFO is the investigative and prosecuting body in the UK
- Penalties range from:

- Summary offences (magistrate/minor) up to 12 months imprisonment and/or up to £5000 fine
- Indictment (judge/serious) up to 10 years imprisonment and/or unlimited fine
- Debarment from competing for public contracts
- Director disqualification

The SFO at its discretion can agree a deferred prosecution agreement under the supervision of a judge. This allows a prosecution to be suspended although case details may still be publicly available.

---

## ABC risks

No countries are immune from corruption risks, [Transparency International](#) show just how each country shapes up. Since 2011 the risks related to ABC continue to increase for organisations. Firstly the rising intolerance of corporate wrongdoing and secondly the continued growth of commerce opportunities with emerging markets where perspectives on corruption may differ to those in the UK. Confronting the problems of ABC may be a simple or complex task depending on the nature of the organisation; a useful guide to the identification, assessment and management of risks has been produced by the [Institute of Risk Management](#).

Between 1999 and 2014, the [OCED](#) reported that just four sectors accounted for almost two-thirds of reported bribery cases: mining (19%); construction (15%); transportation and storage (15%); and information and communications (10%). According to [Kroll's annual global ABC survey](#) 40% of respondents thought that the biggest risk was third party violations of regulation with a significant 12% citing improper payments by their own employees as a risk.

---

## Contract management

Ensuring robust controls across the procurement process is an essential element of any ABC programme from tendering through selection and termination/expiration. Validating new relationships with background checks and establishing conflicts of interest are also important controls alongside contractual terms; there is merit in repeating these checks throughout the life of the contract. Depending on the risk exposure, organisations should consider stipulating ISO37001 certification rather than self-assessed conformance with the Bribery Act.

---

## Joint ventures

Rigorous due diligence is essential when undertaking joint ventures in high risk countries. Awareness of the Act should not be assumed. If the local partner (via its employees or agents) commits bribery intending to secure a contract that benefits the JV business, then the UK-based company could be in breach of the Bribery Act.

---

## Supply chain logistics

Managing third parties across supply chains, particularly those that are global and or complex is a major concern for organisations. The OECD produced [supply chain guidance](#) for the garment and footwear

industry following the tragic 2013 factory collapse in Bangladesh; a whole module on bribery and corruption is included. Internal audit should be mindful that the high volume, high risk suppliers may be more cognisant of ABC than smaller suppliers falling below the risk radar; assurance should consider a broad sample.

---

## Facilitation payments

Payments to expedite or facilitate non-discretionary services or actions such as obtaining permits, licences, visas, customs clearance, providing utilities or loading/unloading cargo. The SFO is clear that such payments have always been illegal. They offer no exemption for the fact that ABC measures have been slower to take effect in some countries. Intermediaries feature in 75% of all ABC cases according to the OCED with agents, brokers and distributors among key players.

---

## Role of internal audit

The nature and extent of ABC activity for internal audit should reflect the risk profile of the organisation. Typical undertakings could include risk assessments, compliance reviews including training and awareness for employees, operational process reviews (procurement, supplier management, advertising, gifts and hospitality, expenses, property management and overseas activities) investigations and validation of external reports. Considerations should also be given to the activities of other organisations in the sector, particularly investigations as early warnings but also presentations on good practice to learn from.

For chief audit executives seeking inspiration and new ways in which to provide assurance, Transparency International has produced detailed **guidance** for organisations across key areas from commitment through to monitoring and reporting.

Irrespective of the nature of the audit CAEs should be aware that in 2017, the SFO successfully challenged against legal privilege for internal documents pertaining to an investigation. This potentially erodes client privilege and whilst the Law Society is seeking to intervene, internal audit must give careful consideration as to how audits are conducted and the reporting of any potential ABC concerns. Legal privilege is a **complicated topic** and we recommend seeking legal counsel if in any doubt.

In the US, the Association of Certified Fraud Examiners identified that only 14% of fraud and corruption is detected by internal audit. Whilst they attributed this to testing methodologies it is not the responsibility of internal audit to detect fraud although through controls testing and data mining it can often be discovered. CAEs should consider the robustness of data analytics across all three lines of defence in the provision of ABC assurance. It may be useful to refer to the institute's paper on **data analytics** which explores practical ways to increase assurance benefits. Specifically related to ABC analytics linking accounts payable to geography could be insightful and using software that enables text mining (documents, emails) could be advantageous in organisations with high risk activities.

Data mining provides insight into a specific moment in time, ABC risks are constant and evolving. The use of continuous auditing techniques should be considered as part of a risk-based audit programme or encouraged as a business activity.

Where bribery is identified, organisations are encouraged by the authorities to 'self-report'. The SFO has stated that self-reporting will not automatically protect against prosecution and whilst having been clear that it was a precondition to potential settlements agreed a settlement in 2017 with a company that had not self-

reported. CAEs interested in the advantages and disadvantages of voluntary disclosure may find an article by the [Global Investigations Review](#) of interest.

---

## Working together

In a [survey](#) of 500 business leaders across 12 countries including the UK only 9% saw bribery primarily as a legal problem, this is because the international consensus was that bribery is bad for business as a whole, not just about regulatory compliance.

- **95%** said ABC a serious concern due to the potential reputational impact, loss of investor confidence and consumer trust
- **90%** would reject a business opportunity if ABC risks were unacceptable
- **80%** had detected corruption
- **45%** detected through employee concerns
- **41%** had self-reported, 90% said they would

Very few executives knew the self-reporting process in their country and its implications.

ABC programmes are about policies, control and culture working together. Programmes should not be the sole responsibility of one function or overseen by a single compliance team, they are about a holistic approach to ethical business. Ben Morgan, the SFO's joint head of bribery and corruption said, "The quality of an organisation's compliance culture isn't defined by how much money it has spent on trying to implement it, or how earnestly people at the top talk about it, but rather by how people at the coalface actually live it."

For internal audit the challenge is to map out the first and second line activities in order to provide oversight assurance i.e. who is doing what and what reliance can be placed on the outputs and outcomes of the 1st and 2nd lines work. Ongoing transaction analysis within finance for example is key to identifying one-off payments to third parties (intermediaries), extraordinary expenses, deviations to authority levels and high value miscellaneous payments. In financial services this would sit well with know your customer analysis.

CAEs may find it insightful to explore this topic at a team meeting, ensuring that the team are abreast of the institute's guidance and sharing insights/concerns of the operational assurance in place.

Internal audit's unique perspective across the organisation is well placed to encourage collaboration across diverse functions. Co-operation is also required to achieve certification of [ISO37001](#), an anti-bribery management system designed to implement or enhance controls depending on the organisations starting position. It is an adaptable approach neutral of organisation size, sector and geography for putting measures in place to prevent, detect and address ABC risks. For high risk organisations it provides comfort that an external body has certified procedures to be adequate, obviously it does not indemnify in the event of a breach.

Organisations that outsource activities in high risk sectors/geographies may consider including it as a prerequisite for awarding contracts, conversely some organisations may need to consider obtaining it to secure contract renewals or future awards. CAEs may wish to consider using the framework as part of a suite of guidance even where full certification is not sought.

---

## Closing thoughts

As auditors are well aware, policies are the weakest form of control, directing activity but doing nothing to prevent, detect or correct inappropriate activities. It is imperative that organisations review their ABC risk profile on a regular basis to ensure that the most effective risk treatments are being deployed.

Organisations that have breached the Act had policies and procedures in place; their issue was compliance, effectiveness and in some cases a cultural malaise that had not been addressed. If a whistle blower called the SFO today and your organisation was investigated, what would the findings be about the role of internal audit? Would your reputation as CAE be a positive one or negatively impacted?

*"No man who is corrupt, no man who condones corruption in others, can possibly do his duty by the community."*

- Theodore Roosevelt