



Regulation, Business Crime and other Legal Risks

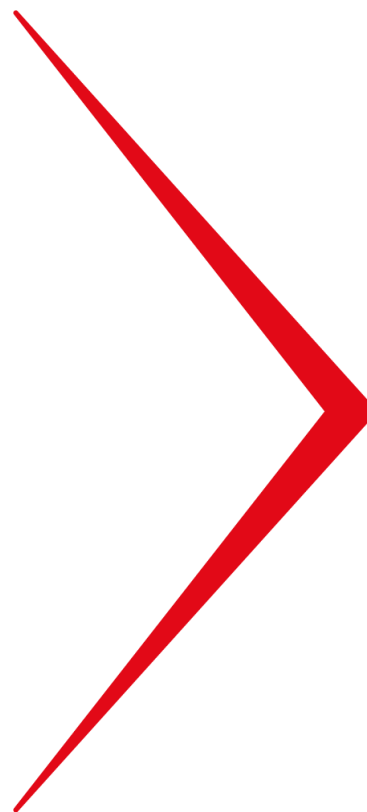
THE CHANGING LEGAL AND REGULATORY ENVIRONMENT
FOR ACCOUNTANTS



Regulation – the problem or the solution?

Efforts to reduce the burden on businesses and individuals is often at odds with the political need to provide more law and regulation to solve new problems.

Increased access to information leads to more awareness of actual or perceived “problem areas” by the public who then put pressure on politicians to respond – with more regulations.



Regulation – the consequence?

New regulations lead to new definitions of ‘business crime’ and ‘corporate responsibility’ and increase the ‘legal risks’ faced by ICAEW members in practice or in business.

Business Law Department

Business Law Department

- Mix of lawyers and accountants, part of Technical Strategy Department
- Lobbies for changes in areas of law and regulation relevant to members
- Issues guidance – formal and informal
- Business Law Committee, sub-committees and working parties
- Further information
 - <http://www.icaew.com/en/technical/legal-and-regulatory/information-law-and-guidance/business-law-department>
 - <http://www.icaew.com/en/technical/legal-and-regulatory>
 - <http://www.icaew.com/en/members/regulations-standards-and-guidance/a-z>

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REGULATION

Company Law – Recent Changes

Aims: Improving Transparency /Reducing Red Tape /Addressing the ‘late payment culture’

- New register of ‘persons with significant control’ – see next slide
- Abolition of bearer shares
- Proposed abolition of Corporate Directors (not in force)
- Abolition of annual returns – replaced by a ‘confirmation statement’ of any updates
- New option to keep company statutory books at Companies House
- Large companies and LLPs to publicly publish their payment policies and practices. (For ICAEW response to BIS consultation see <https://www.gov.uk/government/consultations/business-payment-practices-and-policies-duty-to-report>)
- ICAEW guidance

<http://www.icaew.com/en/technical/legal-and-regulatory/company-law>

<http://www.icaew.com/en/technical/legal-and-regulatory/company-law/other-changes-to-company-law>

Persons with Significant Control (PSC) Register

- Introduced 6 April 2016 and new registration requirements from 30 June 2016
- Register open to public inspection
- Criminal Offence – fine and /or imprisonment
- Applies to UK companies, LLPs and SEs but are exemptions. Proposals to extend to other entities.
- To be a PSC must meet one of the following conditions:
 - Holds directly or indirectly > 25% of shares; or
 - Holds directly or indirectly > 25% of voting rights; or
 - Holds directly or indirectly the right to appoint or remove directors holding a majority of the votes that can be cast at board meetings; or
 - Has the right to exercise or actually exercises *significant influence or control* over the company; or
 - Has the right to exercise or actually exercises *significant influence or control* over the activities of a trust or firm which is not a legal entity and meets any of the above conditions.

Legal Services Act 2007 (LSA)

- Aim - open up competition / improve access to justice but has it worked?
- Introduced :
 - Legal Services Board(LSB) as oversight regulator
 - Legal Ombudsman (LeO) – for complaints
 - Compulsory Compensation Scheme
 - Alternative Business Structures (ABS) and Multi-disciplinary Practices – new forms of legal service providers
- Defined legal activity as either ‘reserved’ or ‘non- reserved.’
 - Reserved - can only be provided by an authorised or exempt provider (member of regulated)
 - Criminal offence if not an authorised or exempt legal services provider
 - Currently 6 – as defined in Section 2 of the LSA :
 - Conduct of litigation –the issuing of proceedings, commencement, prosecution and defence of such proceedings
 - Rights of Access – right to appear before or address a court and call/examine witnesses
 - Probate – preparation of probate papers on which to found or oppose a grant of probate. Can be contentious or non-contentious.
 - Administration of Oaths – take an oath or affidavit for the purposes of a court
 - Notarial activities – authentication and certification of signatures and documents
 - Reserved Instruments – preparation of any instrument of transfer or charge
 - Non – reserved - can be performed by any one
 - Examples include:
 - Will- writing (very difficult area – recommend additional training)
 - Estate administration (but be careful it doesn’t stray into probate)
 - Acting as an executor (see above!)
 - Mediator/Arbiter
 - McKenzie Friend
- ICAEW guidance <http://www.icaew.com/en/members/regulations-standards-and-guidance/practice-management/accountants-and-legal-services>

LSA - Alternative Business Structures (ABS)

What is an ABS?

- Professional firms , other than traditional law firms, licensed to provide reserved legal services as a whole or part of their business
- Can be owned in full or part by non-lawyers
- Still have to be licensed by one of the regulators including ICAEW

Implications for members:

- New business opportunities – ‘one stop shop’
- New employment opportunities
- Additional regulatory and structural controls
 - New roles – *Head of Legal Practice* (HoLP) and *Head of Finance and Administration* (HoFA)
 - Membership of a compensation scheme for clients
 - Clients can refer complaints to LeO

ICAEW guidance available <http://www.icaew.com/en/technical/legal-and-regulatory/probate-and-alternative-business-structures/>

LSA - Probate 1

ICAEW is now an approved regulator of non-contentious probate services and a licensing authority for ABSs. This means members and member firms can:

- apply to be an accredited probate practitioner or firm
 - EITHER as an
 - Authorised firm – all the principals are individually authorised to undertake a reserved legal activity i.e. probate
 - OR as a
 - Licensed firm – not all the firm's principals are individually authorised, this is an ABS
 - So will need to appoint HoLP and HoFA
 - Non-authorised owners
- Why should I do this?
 - 'One stop shop'
 - Privilege
- Do I need to do this? – See ICAEW guidance
<http://www.icaew.com/~media/corporate/files/technical/legal%20and%20regulatory/probate%20and%20abs/regulatory%20advisory%20on%20when%20to%20seek%20a%20licence%20for%20probate.ashx>

LSA - Probate 2

What do I need to do if I want to offer probate services?

- Apply to ICAEW see <http://www.icaew.com/~media/Files/Technical/Legal-and-regulatory/legal-services/icaew-probate-regulations.pdf>
- Become an 'authorised individual' - 3 routes;
 1. ICAEW member – SWAT UK course
 - 2 day course or live/recorded webinar
 - Assessment (c.2.5 hours)
 - For details see SWAT UK <http://www.swat.co.uk/Compliance/Probate.aspx>
 2. Authorisation by another approved regulator
 3. 'Otherwise qualified' – case by case basis
- Undergo Various checks – DBS/ Diversity
- Inform your insurer so your PII covers probate services
- Join Probate Compensation Scheme (compulsory)

LSA – What next?

- Has it worked?
- ICAEW's application for more reserved activities
- CMA Report
- Separation

Charities – recent developments

- Charities Act 2011
 - Consolidating Act but did introduce ...
 - Charitable Incorporated Organisations (CIOs)
- Accounting - Charity SORP 2015
 - For reporting periods starting on or after 1 January 2016 charities must follow the Charities SORP (FRS 102).
 - Applicable to all Charities who prepare accounts on an 'accruals' basis
 - Issued in response to FRS 102 and earlier option to use a different SORP for small charities (FRSSE SORP) no longer applies.
 - Further guidance see <http://www.charitySORP.org/> and <http://www.icaew.com/en/technical/charity-and-voluntary-sector/reporting/the-charities-sorp>

Charities: Reporting Requirements and Further Information

Reporting Requirements:

- AUDIT - General thresholds in England and Wales (consider also constitution and funder requirements)
 - annual income over £1m
 - annual income over £250k and aggregate value of assets over £3.26m
- INDEPENDENT EXAMINATION – annual income between £25k and £1m (unless audit required), with professional examiner required over £250,000.
- Different thresholds in other UK jurisdictions.
- ANNUAL RETURN – Registered charities with income over £10k, plus all CIOs

Further Information:

- Charity Commission www.charity-commission.gov.uk
- ICAEW's Charities Special Interest Group www.icaew.com/charity

Pensions: Auto-enrolment 1

- Every employer with at least one member of staff now has to enrol those who meet certain criteria into a workplace pension scheme and contribute towards it.
- Automatic for employees– they don't have to do anything to be enrolled into the pension scheme but can opt -out.
- Not automatic for employers - need to take steps to make sure all applicable employees are enrolled
- Employers as at 1 April 2012 staged in tranches by size to 1 April 2017
- New employers 1 April 2012 – 30 Sept 2017, staging in tranches to February 2018.
- Post-staging trigger for new employer - the date when the employer's first worker begins to be employed by the employer, where the employer first pays PAYE income in respect of any worker on or after 1 October 2017 and the employers' duties do not already apply to that employer. (Option to postpone up to 3 months)
- 'the expectation is that complying with AE duties is now part of the normal process of setting up a business in the same way that new employers are expected to deal with tax and national insurance from the outset'
- Automatic re-enrolment applies (every three years, so now impacting large employers).
- Pensions Regulator guidance - <http://www.thepensionsregulator.gov.uk/about-automatic-enrolment-for-business-advisers.aspx>

Pensions – Auto Enrolment 2

- Opportunities for accountants:
 - to advise existing clients (as both a payroll provider and general advisor) but need to check business systems/software are AE ready and revisit engagement letters
 - New business stream
- Possible risks
 - To reputation if your client is fined for missing staging dates or certificate of compliance – even if you do not provide payroll services for that client
 - As applies to member firms – check you are in compliance!
- ICAEW guidance – articles, webinars and events

<http://www.icaew.com/auto-enrolment>

<http://www.icaew.com/en/library/subject-gateways/pensions/auto-enrolment>

Data Protection and the General Data Protection Regulations (GDPR)

- Data Protection Act 1998 (DPA)
- General Data Protection Regulations
 - Must be implemented by 25 May 2018
 - EU legislation but Brexit does not mean you can ignore it !
 - Some things have not changed:
 - Still applies to Personal data
 - Definitions of Data Controller and Data Processor :
 - Data Controller -decides why and how personal data is used
 - Data Processor – acts on the instructions of the data controller
 - Can still be a joint data controller with a client
 - 8 Principles of Data Protection
 - Fairly and lawfully
 - For a specified purpose
 - Adequately , not excessively
 - Accurate / up to date
 - For no longer than necessary
 - In accordance with the rights of the individual
 - Securely
 - Within the EEA (but equivalence can apply if not)

General Data Protection Regulations – What's New?

- Accountability
- Data Protection Officer
- Higher Standards for Consent
- Additional Rights
- Additional Responsibilities
- Breaches
- Fines

Data Protection – Other Issues

- Transferring Data to the US
 - *Safe Harbor* is no more
 - Replaced with *EU-US Privacy Shield* but facing challenges
 - ICO current guidance <https://ico.org.uk/media/for-organisations/documents/1560653/data-transfers-to-the-us-and-safe-harbor-interim-guidance.pdf>
 - ICAEW's updated guidance will be here <http://www.icaew.com/en/technical/legal-and-regulatory/other-legal-and-regulatory/licensing-and-registration>
 - ICAEW's [IT Faculty](#) will also be updating its guidance

- EU's ePrivacy Directive

- The Cloud

Data Protection - Guidance

- ICAEW Guidance on GDPR:
 - [Webinar](#)
 - Practice wire article : [The GDPR. What do members need to do now?](#)
 - Technical Release coming soon !
- ICAEW guidance on DPA
 - General <http://www.icaew.com/en/technical/legal-and-regulatory/information-law-and-guidance/data-protection>
 - TECH 05/15BL <http://www.icaew.com/-/media/corporate/files/technical/technical-releases/legal-and-regulatory/tech-05-14bl-data-protection.ashx?la=e>
 - Helpsheet <http://www.icaew.com/en/technical/practice-resources/practice-helpsheets/data-protection>
- IT Faculty publications:
 - Tech Essentials : The essential guide to GDPR
- Information Commissioner's Office (ICO) guidance - <https://ico.org.uk/>

Consultant Lobbying and the ‘Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014’

- A statutory *Register of Consultant Lobbyists* and *Office of the Registrar of Consultant Lobbyists* (ORCL)
- Definition of a *Consultant Lobbyist* – representing the interests of a client by communicating with senior government decision-makers (Ministers, High ranking Civil Servants)
- Could apply to accountants if they are paid to lobby on behalf of a client(s) – even if the activity is not their main business
- Must register in advance of the activity taking place
- Quarterly returns – can be ‘nil’
- Charities are exempt – but only if they do not receive a payment
- ORCL guidance <https://www.gov.uk/government/organisations/office-of-the-registrar-of-consultant-lobbyists>
- ICAEW general guidance <http://www.icaew.com/en/technical/legal-and-regulatory/other-legal-and-regulatory/licensing-and-registration/register-of-consultant-lobbyists>
- ICAEW technical release *Registration of Consultant Lobbyists – Implications for Member Firms* ([TECH 01/17BL](#))



Business Crime

Anti- Money Laundering

- The Laws - Proceeds of Crime Act 2002 (POCA) as amended by the Serious Organised Crime and Police Act 2005 (SOCPA), the Money Laundering Regulations 2007 and the Terrorism Act 2000 (as amended by the Anti-terrorism Crime and Security Act 2001 & the Terrorism Act 2006)
- Definition
 - Concealing, and/or removing from the UK, criminal property
 - Entering into an arrangement to acquire, retain, control or use criminal property
 - Acquiring, using or possessing criminal property
- Catches
 - overseas crimes;
 - past crimes in acquired entities; and
 - tax evasion
- Suspicious Activities Reports – disclosing to authorities, beware of ‘tipping off’
- Money Laundering Reporting Officer (MLRO)
- ICAEW guidance <http://www.icaew.com/en/technical/legal-and-regulatory/money-laundering/uk-law-and-guidance>

Anti-Money Laundering Regulation

- Following are regulated:
 - accountants and lawyers in practice;
 - banks, money services businesses and other financial institutions;
 - trust and company service providers;
 - estate agents, high value dealers and casinos.
- If regulated then must have procedures in place (& follow them!) to ensure you or your business is not used as a vehicle for money laundering.
- Treasury approved guidance will be used by the courts, in their interpretation of the requirements:
 - For accountants – the CCAB Guidance www.icaew.com/moneylaundering
 - For banks and other financial institutions – the Joint Money Laundering Steering Group Guidance <http://www.jmlsg.org.uk/>
 - For other sectors – refer to guidance from regulator, trade or professional body. HMRC and Law Society have also issued guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200701/aml_hmt_approved_guidance.pdf

EU regulations: 4th Money Laundering Directive

- Adopted May 2015 – must be in place in EU member states by May 2017
- Aim – to combat money laundering and terrorist financing
- Applies specifically to auditors, external accountants and tax advisors when acting in a professional capacity
- Risk based approach
- Client Due Diligence
- Politically Exposed Persons (PEPS)
- Central Register of Beneficial Owners
- Penalties – fines up to 1m Euros, withdrawal of authorisation to practice, temporary ban for responsible managers
- ICAEW guidance on EU and International Law <http://www.icaew.com/en/technical/legal-and-regulatory/money-laundering/international-law-and-guidance>
- FEE Guidance http://www.fee.be/index.php?option=com_content&view=article&id=1511&Itemid=106&lang=en

Serious Crime Act

- Received Royal Assent on 3 March 2015
- Implication for members:
 - Section 44 'Participation Offence': targets those who do not lead or directly participate in a criminal act but do participate via provision of services, materials, information etc – so could include accountants and lawyers
 - Problem may arise if an accountant has consent under section 335 of the Proceeds of Crime Act (POCA) from the National Crime Agency to continue with a suspicious transaction for a client (in order to gather information for the prevention or detection of crime) - he or she is still technically breaking the law by committing a participation offence under the SCB
 - CPS unlikely to prosecute - not in accordance with their 'public interest' remit

The Bribery Act 2010

- Came into effect 1 July 2011 & introduced criminal offences of:
 - bribing another person, or being bribed
 - bribing a foreign public official
 - failure of a commercial organisations to prevent bribes being paid on their behalf
 - consenting or conniving to bribery by senior officials
- What is bribery ?- an intention to encourage or induce 'improper performance' by any person in breach of any duty or expectation of trust or impartiality
- Wide application - UK resident or citizen can be guilty of paying or receiving a bribe, whether
 - the recipient is in the public or private sector;
 - any part of the transaction takes place **in the UK or abroad**; and
 - whether or not the bribe is paid directly or indirectly.
- Foreigners can be guilty if any part of the transaction takes place in the UK
- ICAEW guidance:
 - general guidance <http://www.icaew.com/en/technical/legal-and-regulatory/business-crime-and-misconduct/bribery-and-corruption/bribery-act-2010>
 - *The UK Bribery Act 2010: Implications Outside the UK*
<http://www.icaew.com/~media/corporate/files/technical/legal%20and%20regulatory/business%20crime%20and%20misconduct/tecpln12947%206%20bribery%20act.ashx>

The Bribery Act – Implications for Businesses

- Corporate entities and their senior officials can use the defence that “adequate procedures” were in place to prevent bribery.
- These are:
 - Risk Assessment
 - Proportionate Procedures
 - Top-level Commitment
 - Due Diligence
 - Communication - to include staff training
 - Monitoring and review
- Statutory guidance on the interpretation of this defence has been issued by the Ministry of Justice:
<https://www.gov.uk/government/publications/bribery-act-2010-guidance>
- ICAEW guidance <http://www.icaew.com/en/technical/legal-and-regulatory/business-crime-and-misconduct/bribery-and-corruption/bribery-act-2010>

The Bribery Act – Difficult Areas & Latest Developments

Difficult areas:

- Facilitation payments
 - a small bribe to facilitate or speed up routine government action nb no exemption based on size of the payment but if such payment is required or permitted **and written** in local law then permitted
- Hospitality and other marketing expenses
 - Must be proportionate but purpose will determine if allowed
- Overseas agents, joint ventures and subsidiaries
 - ‘associated person’- do you know what they are up to!

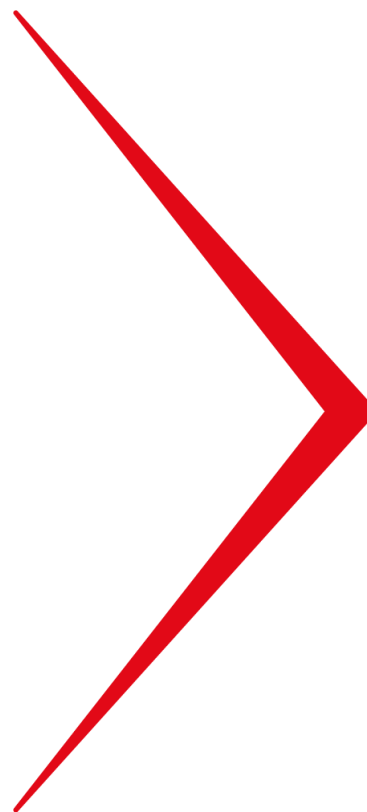
New Developments:

- First convictions in 2015
- Deferred Prosecution Agreements
- UK Government’s Anti-Corruption Plan : Pursue, Prevent, Protect and Prepare – published 2014 – 66 action points!
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf
- International Corruption Unit (ICU) – focus on international corruption in UK



Other Legal Risks and Responsibilities

*The Risk of Not
Being Responsible*



*Legal Sanctions
Fines
Reputational
damage*

Whistleblowing

Whistleblowing is when an individual raises a concern about a danger, risk, malpractice or wrong doing within an organisation. The concern may be raised internally or externally

See more at: <http://www.icaew.com/en/technical/legal-and-regulatory/information-law-and-guidance/whistleblowing#.dpuf>

The Law

- Public Interest Disclosure Act 1998 (PIDA) –offers protection to employees who blow the whistle
- Enterprise and Regulatory Reform Act 2013 (ERRA) – further protection but must be in ‘public interest’

Implications for employers

- Not mandatory to have a policy but UK Corporate Governance Code suggests that audit committee should have oversight
- Annual reporting of disclosures mooted
- Reputational Risk

Whistleblowing - Guidance

- ICAEW guidance <http://www.icaew.com/en/technical/legal-and-regulatory/information-law-and-guidance/whistleblowing/the-public-interest-disclosure-act-pida-1998>
<http://www.icaew.com/en/technical/legal-and-regulatory/information-law-and-guidance/whistleblowing>
- Public Concern at Work (PCaW) <http://www.pcaw.org.uk/>
- BIS guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323399/bis-14-914-whistleblowing-framework-call-for-evidence-government-response.pdf
- FCA/PRA Rules <https://www.fca.org.uk/news/fca-introduces-new-rules-on-whistleblowing>

Modern Slavery Act 2015

- Section 54 – Slavery and Human Trafficking statement to be produced annually and displayed prominently on website
- Applies to any commercial organisation with a turnover >£36m
- Applies to year ends on or after 31 March 2016
- Penalties for non –compliance?
 - If an organisation does not prepare a statement, the Secretary of State can apply for an injunction to force compliance. If an organisation still refuses to comply they will be deemed to be in contempt of a court order, which is punishable by an unlimited fine.
 - It is expected that pressure by consumers, investors and non-governmental organisations and the potential threat to their reputation will encourage organisations to comply with the Act.

Slavery and Human Trafficking Statement – Transparency in Supply Chains

- The Modern Slavery Act provides a non- exhaustive list of information that may be included:
 - The organisation’s structure, business and supply chains
 - Its policies on slavery and human trafficking
 - The due diligence processes it has undertaken with regard to the risk of slavery and human trafficking within its business and supply chains
 - The parts of the business and supply chains where there is a risk of slavery and human trafficking
 - How it measures that slavery and human trafficking has not taken /is not taking place in its business or supply chains
 - Staff training.
 - Must be signed off by a senior member of the management team
 - Above all, however, the statement should be succinct and easy to read: links to supporting documentation may aid this.
- ICAEW Guidance:
 - Listen to our webinar : [The Modern Slavery Act 2015. It doesn't effect my organisation or does it?](#)
 - <http://www.icaew.com/en/technical/practice-resources/icaew-practice-support/practicewire/news/modern-slavery-and-accountants>
 - <http://>
 - Home Office Guidance: [Transparency in Supply Chains etc. A Practical Guide](#)

Gender Pay Gap Reporting Regulations

- Came into force 6 April 2017
- Applies to organisations with over 250 employees
- Snap shots dates – 5 April 2017 (Private Sector), 31 March 2017 (Public Sector)
- Deadline for Reporting – 12 months after snap shot date (i.e. 4 April 2018 or 30 March 2018)
- Annual Publication (on website) of 6 calculations:
 - Average gender pay gap as a mean average
 - Average gender pay gap as a median average
 - Average bonus pay as a mean average
 - Average bonus as a median average
 - Proportion of males and females receiving a bonus
 - Proportion of males and females in 4 quartiles
- Optional narrative
- Must be signed off as 'accurate' by a senior member of management team
- Penalty – reputational risk, naming and shaming on government database

Gender Pay Gap Reporting 2

- Who to include?
 - Any employee including some overseas workers
 - Part time workers, job shares and some self employed or contractors but not agency workers
 - Directors included but not partners
 - Group companies
- What counts as pay?
 - Hourly pay
 - Benefits
 - Pensions
 - Allowances
- Gender identity
- How to explain the figures

Guidance – ACAS <http://www.acas.org.uk/index.aspx?articleid=5768>

ICAEW <http://www.icaew.com/en/technical/legal-and-regulatory/other-legal-and-regulatory>



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