



Regulatory Update

The Criminal Finances Act

Provided by **Crendon Insurance Brokers Ltd**

Quick Facts

- The CFA creates new government powers to help investigate and tackle money laundering.
- The CFA requires corporations to prevent their staff from facilitating tax evasion.
- The CFA authorises courts to issue Unexplained Wealth Orders.
- The CFA applies to property and individuals both within and outside of the UK.

The CFA's objective is to 'create a more hostile place for those seeking to move, hide, or use the proceeds of crime and corruption'. Along with the 2010 Bribery Act, experts believe that the CFA is the most important anti-corruption legislation to be passed in the United Kingdom in the past 30 years.

The Criminal Finances Act (CFA) became effective on 30 September 2017. The CFA was adopted as part of a larger government initiative to encourage greater corporate social responsibility and transparency.

The CFA's objective is to 'create a more hostile place for those seeking to move, hide, or use the proceeds of crime and corruption'. The CFA accomplishes this by giving the government tools to discover, investigate and penalise money laundering, tax evasion, terrorist financing and other corrupt practices.

New Government Powers

The CFA creates new powers to enable law enforcement agencies and the private sector to investigate and fight corrupt practices. These new powers include the authority to:

- Seize and forfeit criminal activity proceeds that are stored in UK assets (including bank accounts and high-value property);
- Allow firms in the regulated sector to work together and share information to identify and counter money laundering;
- Issue Unexplained Wealth and Disclosure orders; and

- Hold corporations, not only employees, accountable for failing to prevent the facilitation of tax evasion.

Unexplained Wealth and Disclosure Orders

Unexplained Wealth and Disclosure orders are legal tools that provide stronger powers for UK enforcement agencies to discover, investigate, seize and repatriate corrupt proceeds.

The orders must be issued by a high court judge and require affected individuals to explain (or disclose) how they acquired the assets in question. Law enforcement personnel may use the responses to these orders against individuals that fail to respond or that provide an unsatisfactory answer.

Making false or misleading statements when responding to an order may result in criminal charges that carry a maximum penalty of two years' imprisonment.

The orders may be issued to individuals not based in the United Kingdom and may be related to property outside of the United Kingdom.



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The National Crime Agency estimates that the amount of money laundered in the United Kingdom is between £36 billion and £90 billion, while the Home Office estimates that serious and organised crime costs the United Kingdom at least £24 billion annually.



Enforcement and Penalties

The CFA also creates two new criminal offences to hold corporations responsible:

1. The failure to prevent the facilitation of UK tax evasion by an associated person
2. The failure to prevent the facilitation of non-UK tax evasion by an associated person

This means that the CFA is not limited to corrupt practices within the United Kingdom, and corporate entities can also violate the CFA if they engage in corrupt practices in foreign territories. Penalties for these offences include unlimited financial penalties as well as ancillary orders such as confiscation orders or serious crime prevention orders.

Compliance Guidelines

To comply with the CFA, corporations will need to prevent their staff from facilitating tax evasion by undertaking 'reasonable prevention procedures' informed by six guiding principles, which are enumerated below.

1. **Risk assessment:** Carry out a risk assessment and identify the specific facilitation risks.
2. **Proportionality of risk-based prevention procedures:** Implement procedures that are proportionate to the specific risks identified through the risk assessment.
3. **Due diligence:** Perform due diligence of staff, third parties and clients in proportion to the risks that they pose to the business.
4. **Top-level commitment.** Ensure that there is a top-level commitment within the organisation to prevent the facilitation of tax evasion.
5. **Communication (including training):** Train employees and third parties to ensure prevention procedures are embedded and understood.

6. **Monitoring and review:** Monitor and review procedures and risk assessments regularly.

The CFA offers some protections to corporations that take measures to prevent the facilitation of corrupt practices.

How Can Low-risk SMEs Comply?

SMEs should first undertake a risk assessment of the products and services they offer, as well as internal systems and client data that might be used to facilitate tax evasion, including 'sitting at the desk' of employees and other associated persons, and considering the motive, means and opportunity for facilitating tax evasion.

Consider the fraud 'red flags' when undertaking the risk assessment, such as:

- Are there staff members who refuse to take leave and do not allow anyone else to review their files, or are overtly defensive over client relationships?
- Do existing processes ensure that for higher-risk activity at least a sample of files are routinely reviewed by a second pair of eyes?

Consider tailoring existing processes and procedures to prevent and detect evasion facilitation, which could include:

- Put terms in contracts requiring employees and contractors to not engage in facilitating tax evasion and to report concerns immediately.
- Issue a prominent message from senior management decrying tax evasion.
- Provide regular training for staff on preventing the facilitation of tax evasion.
- Establish clear reporting procedures for whistle-blowing of suspected facilitation of tax evasion.

Contact **Crendon Insurance Brokers Ltd** for more information on other relevant UK employment laws.