

## FINAL COUNTDOWN TO A NEW CORPORATE CRIMINAL OFFENCE

### The new offence of failure to prevent fraud comes into force on 1 September 2025

The new offence of failure to prevent fraud will make large organisations criminally liable for failing to prevent fraud, unless they can demonstrate that they had reasonable fraud prevention procedures in place.

Here, we consider some practical issues that corporates are facing as they prepare for the new offence to come into force.

#### AT A GLANCE

- 1. A new offence of failure to prevent fraud will come into force on 1 September 2025.** Large organisations may be held criminally liable for failing to prevent fraud committed by employees, agents, subsidiaries and other associates of the organisation.
- 2. There are practical implications for corporates to work through ahead of the new offence coming into force.** There are important differences between the new offence and other similar existing offences, such as failure to prevent bribery and tax evasion.
- 3. A fraud risk assessment is key to demonstrating reasonable procedures.** This will need to cover all areas of the organisation's business.
- 4. Companies must identify their associates.** This will include identifying those providing services for and on behalf of the organisation so that appropriate steps can be taken to manage any related risks.
- 5. Non-UK group companies may be within scope of the new offence.** It will be important to understand the extent of their exposure to the UK so that appropriate fraud prevention procedures can be considered.

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## Practical implications for businesses

### 1. Breadth of the offence

Where a corporate group as a whole meets two or more of the 'large organisation' criteria (see right), then every company within the group is subject to the new offence, regardless of the size of the company.

When applying these criteria, the turnover/assets/employees of all companies within the group are considered, regardless of whether the company is incorporated in or does business in the UK.

We have found that the breadth of the offence is not always fully understood. In particular, small UK companies within a large international corporate group can be subject to the new offence. Equally, non-UK companies within a UK corporate group can be caught.

### 2. Approach to non-UK entities

We are finding that many companies are unsure of the approach to take with non-UK entities within their group.

Whilst non-UK companies can be subject to the new offence, liability will only arise where the company has failed to prevent a UK fraud offence - typically, requiring one of the acts which was part of the fraud to have taken place in the UK, or any gain or loss resulting from that offence to have occurred in the UK.

The key starting point for non-UK companies will therefore be to assess the extent of their UK exposure. For example, whether the company sells to UK customers, or has a UK representative or agent, will be relevant factors in assessing the risk and will inform what fraud prevention procedures (if any) the company should have in place.

## NEW CORPORATE CRIMINAL OFFENCE: FAILURE TO PREVENT FRAUD

- Pursuant to the new offence, large organisations can be held criminally liable for failing to prevent fraud committed by their 'associates'.
- Only 'large organisations' are covered by the new offence (i.e. organisations that meet two or more of: (1) turnover of more than £36m; (2) total assets of more than £18m; and (3) more than 250 employees). If a corporate group meets this test, the parent undertaking and each subsidiary undertaking within the group will be in scope, regardless of whether the individual undertaking meets the test on a standalone basis.
- 'Associates' will include employees, agents and subsidiary undertakings, and may also extend to suppliers, sub-contractors and other similar third parties where they provide services for or on behalf of the organisation.
- To fall within the new regime, the associate must commit a fraud offence to directly or indirectly benefit the organisation, or to benefit a person to whom the associate provides services on behalf of the organisation. The organisation will not be liable if it was a victim of the fraud.
- Parent undertakings can be guilty of the offence where fraud has been committed by an employee of a subsidiary undertaking, where the offence was committed for the benefit of the parent.
- The underlying fraud must be one of the specified base fraud offences. These extend beyond the core statutory fraud offences (in the Fraud Act 2006) to include false statements by company directors, false accounting, fraudulent trading and cheating the public revenue. A wide range of potential conduct is therefore covered. Our top-level guide to the base fraud offences – What is Fraud? – is [here](#).
- The offence will apply to organisations wherever they or their associates are incorporated or carry on business, provided the organisation has failed to prevent one of the specified UK fraud offences.
- The offence is one of strict liability – i.e. it does not require intent. It is therefore an easier route to conviction of a corporate entity.
- An organisation will not be guilty of the offence if it can demonstrate that it had reasonable fraud prevention procedures in place, or that it was reasonable not to have such procedures.

### 3. Scope of fraud risk assessment

Companies will have a defence if they can demonstrate that they had reasonable fraud prevention procedures in place at the time of the wrongdoing (see our practical guide to fraud prevention procedures for corporates [here](#)). A key component will be demonstrating that a fraud risk assessment has been conducted to assess the company's exposure to fraud risks and take mitigating actions as a result.

The scope of the risk assessment required for the new fraud offence is significantly wider than companies may be used to in other contexts, for example in relation to bribery-related risks.

Given the breadth of the offence, fraud risk assessments should thoroughly consider all parts of the business, given the many different contexts in which fraud offences may occur.

### 4. Know your associates

The new offence criminalises companies for failing to prevent fraud committed by 'associates' of the company, where the fraud is for the benefit of the company or a person to whom the associate provides services on behalf of the company.

The definition of associates automatically includes employees, agents and subsidiary undertakings, and few companies will have difficulties in defining this group of associates. However, it also includes any person performing services for or on behalf of the company, and we have found that companies have found it more challenging to define this category of associates.

It will be important for companies to have a clear view of the third parties that perform services for or on their behalf so that appropriate steps can be taken to mitigate the risk that they pose. Third parties only providing services to the company (for example suppliers) will not be associates; corporates should focus on identifying those acting for or on their behalf. This analysis will ultimately be fact-specific to each third party, but examples might include subcontractors providing services to the company's customers or intermediaries used by companies to source business opportunities.

### 5. Mitigating the risk posed by associates

Once a company has identified its associates it will need to consider how best to mitigate the risk. A wide range of options is available: the key is to ensure that any measures to be taken respond to and are proportionate to the risks identified in the fraud risk assessment.

For example, contractual provisions may be used. For lower risk associates, these could be straightforward, such as requiring the associate to comply with all applicable laws, including relevant fraud legislation; for higher risk associates, more substantive provisions might include requiring the associate to comply with relevant company policies, to give fraud specific representations and warranties, and/or to permit the company access to its business records in order to ensure compliance with its obligations.

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