View this email in your browser

Economic Crime and Corporate Transparency Act 2023: Guidance on Reasonable Fraud Prevention Procedures

Of particular interest to: All UK firms and global firms with UK presence

In Brief

The Economic Crime and Corporate Transparency Act 2023 (“ECCTA”), enacted on October 26, 2023, aims to strengthen the UK's legal framework against economic crimes like fraud and money laundering. One of the changes the Act introduces is the corporate criminal liability for failing to prevent fraud, requiring organisations to implement "reasonable procedures" to mitigate risks. The Act also adjusts criteria for corporate liability, making it easier to hold companies accountable for the conduct of representatives of the company or, where applicable, its parent company regardless of the parent company’s jurisdiction of incorporation. Additional reforms enhance anti-money laundering measures, strengthen law enforcement powers over cryptoassets, and reform Companies House and limited partnerships. These changes align with the UK's goals to improve economic transparency and prevent financial crimes.

Summary

Following the above, the U.K. Home Office has published guidance concerning the ECCTA, and 6 principles on good practice which is also helpful for smaller organisations out of scope of the Act. This publishment outlines key insights into Chapter 3 of the guidance: Reasonable Fraud Prevention Procedures, which provides practical advice to organisations on establishing adequate procedures to prevent fraud within their operations.

The U.K. Home Office also notes that “it is not necessary or desirable for organisations to duplicate existing work. Equally, it would not be a suitable defence to state that because the organisation is regulated its compliance processes under existing regulations would automatically qualify as ‘reasonable procedures’ under the Economic Crime and Corporate Transparency Act”.
ECCTA introduces an offence of 'failure to prevent fraud’ making it mandatory for organisations to implement reasonable fraud prevention procedures to mitigate risks. This offence makes it easier to hold organisations accountable for fraud committed by employees or other associated persons.

Organisations in scope include large organisations, defined under Section 201 of the Act, which are those meeting two out of three criteria:

- A turnover exceeding £36 million.
- A balance sheet total over £18 million.
- Over 250 employees.

The new offence makes organisations liable for fraud committed by employees, agents, subsidiaries, or others acting on their behalf if the fraud benefits the organisation or its clients. This means that where the relevant body is not itself a large organisation, but a subsidiary of a body which is a large organisation, it will be in scope of the failure to prevent fraud offence. Organisations will only have a case against the offence if they able to demonstrate reasonable procedures in place to prevent fraud.

Sections 199-206 and Schedule 13 of the ECCTA outline the rules, which aim to deter fraud by holding organisations accountable, and provides the full list of specific fraud offences. The broad scope of the offence means that senior managers do not need to have known about the fraud for liability to apply, and whilst liability is corporate, individuals who commit or assist in fraud can still be prosecuted.

The offence will come into effect on 1 September 2025, hence organisations have now 10 months to implement fraud prevention procedures.

Chapter 3 of the Home Office's guidance details the principles organisations should consider when developing these preventive measures. The key components include:

Risk Assessment
Organisations are advised to conduct thorough risk assessments to identify areas where they may be vulnerable to fraud. This process should be continuous and tailored to the organisation's nature, size, and business sector.

Proportionality of Procedures
Fraud prevention procedures must be proportionate to the risks identified. Organisations should consider balancing preventive measures with their available resources and operational needs to avoid excessive burdens.

Top-Level Commitment
The guidance emphasizes the importance of senior management's commitment to fraud prevention, promoting an ethical culture, and actively supporting fraud prevention policies across the organisation.

Due Diligence
Due diligence procedures should be applied to third parties, partners, and internal processes to prevent opportunities for fraud. The level of due diligence will depend on identified risks and the nature of the relationship with the third party.

Communication and Training
Effective communication and regular training on fraud prevention policies are essential. All employees, particularly those in high-risk roles, should understand the organisation's anti-fraud measures and know how to report suspicious activity.

Monitoring and Review
Organisations are advised to monitor and review their fraud prevention measures to ensure they remain effective and responsive to evolving risks. This includes regular audits, updates to procedures, and assessments of emerging fraud trends.

Useful Links
Economic Crime and Corporate Transparency Act 2023: Guidance to organisations on the offence of failure to prevent fraud (accessible version) - GOV.UK
Economic Crime and Corporate Transparency Act 2023
Changes to UK company law: a big moment for Companies House – Companies House
Economic Crime and Corporate Transparency Act 2023: Factsheets - GOV.UK

Our mailing address is:
126 / 128 Buckingham Palace Road, 2nd Floor, London SW1W 9SA