

Your Liability for Fraud: Are You Looking the Right Way?

Article

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A new criminal offense in the UK imposes liability on corporates that fail to prevent certain fraud offenses (i.e. a predicate offense) being committed by their agents, employees and other third parties acting on the company's behalf such as, contractors, service providers and even subsidiaries and affiliates.

The "failure to prevent fraud" offense, set out in the Economic Crime and Corporate Transparency Act 2023, comes into force Sept. 1. Like other corporate financial crime offenses in the UK, it is a strict liability offense, leaving corporates criminally responsible regardless as to their knowledge or endorsement of the underlying criminal offense. The only defense is to have "reasonable fraud prevention procedures."

Corporates have long considered their fraud risks and taken steps to manage them. However, what differs with this new offense is that it focuses on *outward* rather than *inward* fraud. Most corporate compliance programs focus on protecting the corporate's assets from fraud in a situation where the corporate would be the victim (inward fraud). This offense protects the public from frauds committed on the corporate's behalf – outward fraud – and consequently many corporate compliance programs will simply not be up to scratch to mitigate the risks of the new offense.

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