

# Economic crime reforms and new failure to prevent fraud

## How TLT can help you

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### Failure to prevent fraud



Under this offence, large organisations will be criminally liable if an employee or third party acting on its behalf commits external fraud (not fraud against the firm itself).

**Large organisations** are companies and partnerships that meet two of the following three criteria:

- **Turnover – more than £36m**
- **Balance sheet total – more than £18m**
- **Employees – more than 250**

The types of fraud covered by this offence are very broad and so firms could be automatically liable for greenwashing offences and false statements in marketing materials.

However, it will be a **complete defence** for the firm to show it had reasonable preventative procedures, or that it was reasonable not to have them, in place at the time of the offence.

The government will issue guidance on what constitutes reasonable procedures before this offence comes into force. Nevertheless, the guidance is likely to closely follow the guidance for the similar bribery and tax failure to prevent offences. As a result, firms can get ahead now by assessing their fraud risk and mapping existing fraud controls to see if any gaps exist and put controls in place to fill those gaps.

### How TLT can help you prepare

- Assessment of the risk of outward fraud.
- Map out your existing fraud controls and complete a gap analysis against the level of reasonable preventative procedures.
- Drafting or updating your policies and procedures.
- Third party review.
- Implementing the new or revised policies and procedures and delivering training.
- Provide sessions with senior management to discuss expectations within your firm.



### Extension of corporate liability



The extension of corporate liability will make it easier for law enforcement to prosecute firms for economic crimes committed by senior managers.

**Economic crime** in this instance is very broad and includes money laundering, sanctions, bribery, tax evasion and even misleading the FCA or the PRA.

**Senior manager** is not just a statutory director but is also defined as a person playing a significant role in decision making or management of the organisation, allowing prosecutors to assess what the employee was doing in practice and whether this can be attributed to the firm, rather than their job title. In addition, as this is the criminal law, it will be difficult to run so-called "corporate veil" arguments to distinguish an individual's conduct with that of the company, or to provide a complete defence for the company.

### How can TLT help you prepare?

This offence came into force on **26 December 2023** and now is the time for firms to review and refresh their economic crime compliance programmes to ensure they are fit for purpose to seek to prevent their senior managers from committing economic crime.

Our expert team has many years' experience of designing, implementing and operating economic crime compliance programmes across a wide range of industries and sectors, and so are perfectly placed to assist you with this review.



### The Economic Crime and Corporate Transparency Act (the "Act") received Royal Assent on 26 October 2023.

The Act is incredibly wide-ranging, from the reforms to Companies House, described by its Chief Executive Louise Smyth as "*without doubt the most significant change for Companies House in our long history*", through to new provisions to encourage businesses to share information to tackle economic crime, and greater powers to the National Crime Agency to compel businesses to hand over information in relation to money laundering and terrorist financing.

However, it is the introduction of the failure to prevent fraud offence and the extension of corporate liability for all economic crimes committed by a firm's senior manager that means the Act represents the biggest legislative shake up in economic crime the UK has seen since the Proceeds of Crime Act in 2002.

What does the failure to prevent fraud offence and extension of corporate liability mean for you and what can you do to prepare?

### Get in touch

We will be running a series of events and activities to keep you informed of all developments. Contact us for more details.



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