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# Top Tips for Global Companies Preparing for the UK's New "Failure to Prevent Fraud" Offence

***Companies in the US and around the world should consider their potential for UK exposure and assess their compliance programmes in light of that risk.***

On 1 September 2025, the UK will implement a new corporate criminal offence known as "failure to prevent fraud" (FTPF). Under FTPF, organisations may be criminally liable for fraud committed by their associated persons, if the fraud was committed for the organisation's benefit. This will require a shift for companies whose compliance programmes may have focused historically on prevention of inwards fraud (where the company is a victim) rather than outwards fraud (where the company will benefit). The offence is intended to have broad jurisdictional reach and cover conduct outside the UK, so UK authorities may seek to apply it broadly to companies in the US and around the world.

In this Alert, we look at what US and global companies need to know about the new offence and set out some key considerations from recently issued statutory guidance (the Guidance).

## What Is the "Failure to Prevent Fraud" Offence?

The FTPF offence will apply if a "large organisation" benefits from fraud committed by its associated persons. Liability may arise if:

- an "associated person",
- commits a specified fraud offence,
- with intent to benefit the organisation (directly or indirectly).

A "large organisation" is defined as one that meets two of the following criteria: (i) more than 250 employees; (ii) more than £36 million turnover; and/or (iii) more than £18 million in total assets.

An "associated person" is broadly defined as any person who performs services for or on behalf of the relevant organisation and may include officers, directors, employees, and agents, as well as subsidiaries and employees of subsidiaries.

An organisation can be liable (and subject to an unlimited fine) under the new offence for a wide range of fraud offences (including fraudulent misrepresentation, financial misstatements, or fraudulent trading) committed by their associated persons if the intention of the associated person is to benefit the organisation

— even if that benefit is not the primary intention (i.e., they are committing the fraud primarily for their own benefit). For example, offences could arise out of fraudulent representations and/or warranties made in transaction documents; false statements made by directors to shareholders; or by third-party agents or representatives mispresenting the quality of products or services to increase sales or improve the financial outlook of a company.

## Why Is FTPF Relevant to US and Global Companies?

The offence has broad jurisdictional scope and may apply to companies around the world if:

- any part of the fraud offence was conducted in the UK; or
- the actual (not just intended) gain or loss occurred in the UK.

Perceived acts of fraud in the US by a US company could attract attention from UK authorities under the new law if they involve conduct or victims in the UK. For example, a US company could face liability in the UK if an agent fraudulently misrepresents product quality, resulting in financial harm to UK customers. Similarly, perceived fraudulent financial misstatements by a US company could potentially attract liability in the UK if they result in losses to UK investors.

The new law's jurisdictional reach may also extend to UK subsidiaries of US companies and the employees of those subsidiaries, which could qualify as "associated persons" if either the subsidiary itself or its employees perform services on behalf of the US parent company. This means that a perceived fraud committed by a subsidiary that benefits the parent company could create liability for the US parent company under the FTPF offence. In addition, UK authorities may take the position that subsidiaries can be liable for an FTPF offence themselves, even if they are not themselves a large organisation, as long as the parent company is a large organisation.

## What Can US and Global Companies Do to Prepare?

Under the new law, companies will have a defence if they can demonstrate that they had reasonable procedures in place to prevent fraud by their associated persons. The Guidance set forth six key principles for assessing such procedures, namely: top level commitment to fraud prevention, risk assessments, proportionate risk-based procedures, due diligence, communication (including training), and monitoring and review.

In order to prepare for the UK's implementation of this new offence, US and global companies may wish to review and consider various aspects of their compliance programmes, including:

1. **Ownership**: Consider if ownership of relevant risks has been assigned to appropriate legal or compliance teams.

2. **Risk assessment**: Conduct a thorough risk assessment to identify whether the company is potentially in scope as a "large organisation" with any relevant jurisdictional links. These links may include UK subsidiaries or third-party associated persons (such as agents acting on behalf of the company in the UK) as well as potential victims in the UK (e.g., investors, customers, or shareholders). Such a risk assessment should also consider the type of fraud risks the organisation faces; for example, incentive-based fraud, such as manipulating financial data to meet performance targets; procurement fraud, in which kickbacks are given in exchange for contracts; or third-party fraud, such as agents or distributors inflating sales figures to meet targets.

3. **Senior management**: Consider the role of senior management in fraud prevention and fostering a culture of integrity. Examples may include endorsing anti-fraud policies, allocating resources to prevention efforts, adopting whistleblowing policies, and leading by example to set the tone from the top.

4. **Policies and procedures**: Review fraud prevention policies and procedures to ensure they are appropriately designed to address any risks identified and implement any necessary updates. Any companies that have historically focused on preventing inward fraud (in which the company is a potential victim of fraud) may wish to consider additional measures that mitigate against outward fraud (in which the company could benefit from the fraud), which is the focus of FTPF. Those with a heavy UK presence should also consider other applicable regulations with potentially overlapping compliance requirements, such as financial reporting and disclosure obligations under the UK Companies Act 2006 and bribery prevention measures under the Bribery Act 2010.

5. **Communication**: Communicate updated policies and procedures to employees and other parties acting on behalf of the company. Communication may include top-level commitment and training to those in higher-risk positions. This may necessitate cross-function coordination between ethics and compliance or legal teams and finance as multiple lines of defence in the prevention of fraud. Companies may wish to consider leveraging third-party risk management tools, such as automated screening platforms and supplier due diligence software, to strengthen oversight of agents, distributors, and other external entities acting on behalf of the company.

6. **Training**: Review existing training programmes to ensure education of employees and associated persons on fraud risks and the organisation’s prevention measures, including whistleblowing procedures. Continuous communication can reinforce the organisation’s zero-tolerance stance on fraud and clarify the consequences of fraudulent behaviour.

7. **Monitoring**: Consider measures to regularly monitor and evaluate fraud prevention measures. This may include detecting and investigating suspected fraud, identifying patterns of attempted fraud, and assessing the effectiveness of existing controls to ensure continuous improvement.

8. **Investigation framework**: Develop a robust investigation framework to address instances of suspected fraud. This may include protocols for internal reporting, investigation, and escalation to relevant authorities, where necessary.

These principles, of course, may align with expectations of various other law enforcement authorities in the US and around the world. With the UK’s broad new law coming into effect this year, an appropriately tailored compliance review and enhancement measures may help global companies prepare for the possibility that conduct in or affecting the UK will lead to broad investigations by UK authorities.

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