PKF GM

The Economic Crime and Corporate Transparency Act

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The Economic Crime and Corporate Transparency Act recently received Royal Assent and introduces UK authorities to proactively target organised criminals. it is expected that this new offence will be effective by the end of 2024, following publication of government guidance.

The Act is quite lengthy and incorporates many aspects, but the main ones affecting fraud are:

Companies House will receive enhanced abilities to verify the identities of company directors, remove fraudulent organisations from the company register and share information with criminal investigation agencies.

Once the powers come into force, the agency will take immediate steps to improve the quality of information on the company register.

- Invalid registered office addresses, such as those used fraudulently to set up companies, will be removed.
- Verification checks will assess the identities of people setting up and managing companies, stopping criminals hiding behind false names or registering companies with fictional characters.
- This will help prevent fraudulent appointments and prevent those involved in money laundering hiding behind false names.
- Changes to public beneficial ownership registers will also close gaps that allow corrupt actors to use companies to move and hide money.

The 'identification doctrine' will also ensure businesses are held criminally liable for the actions of Senior Leaders who commit Economic crime.

The 'Failure to Prevent Fraud' offence will only apply to 'large organisations' who meet at least two of the following three criteria:

- Employ more than 250 staff;
- have in excess of £36 million turnover;
- or more than £18 million in total assets.

Although those organisations falling outside of the scope will not be obliged by law to adhere to the legislation, we are suggesting that as best practice all organisations should look to embed the same approach to Prevent fraudulent activity. As a large organisation it may be best to ensure that your supply chain adopt a similar approach to minimise the risk.

The creation of the criminal offence, will make large organisations criminally liable if they benefit from fraud committed by the organisation.

This may include:

- Financial statement fraud, e.g., under recognising accruals
- Non-financial statement fraud, e.g., misreporting such as carbon emissions
- Rogue trading
- Bribery & Corruption
- Intellectual Property breaches including theft.

1. Organisations will be liable if an 'associated person' commits a fraud offence for the benefit of the company. For these purposes, an associated person includes employees, agents, subsidiaries and intermediaries who perform services for or on behalf of the company.
2. The Act provides an important exemption where the company was or was intended to be a victim of the fraud offence. This means a corporate will not be liable where an associated person commits a fraud offence for their own benefit, rather than for the benefit of the company.
3. The company does not have to be aware of the fraud in order to be liable. It is sufficient for a crime to be committed by an associated person for the company's benefit.
4. Additionally where fraudulent behaviour occurs overseas and would constitute fraud in accordance with UK law, or targets UK victims, the company may still be liable. Equally, where misbehaviour occurs in the UK, but the company is not based in the UK, the company could still be committing an offence.
5. The defence available to a corporate is to show that they have reasonable procedures in place to prevent the fraud from happening. It is expected that the Government will issue guidance on what they consider reasonable prevention procedures during 2024.

But as a guide, PKF are suggesting these may be similar to those specified within the Bribery Act so suggest that organisations:

- Consider their corporate governance currently in place and revise all policies and procedures to ensure they protect the business from Fraud, Bribery & Corruption.
- Ensure that you provide awareness and education to all staff and any other 'associated' persons and include the Economic Crime and Corporate Transparency Act and remind all of the Fraud Act & Bribery Act.
- Have identified all fraud risks across the organisation and documented them within Fraud Risk Assessments.

This is the most significant change to legislation effecting serious economic crime in over 10 years, since the introduction of the Bribery Act in 2010. This new legislation will help prevent crime, as large corporates can no longer 'sweep fraud under the carpet'.

The Economic Crime & Corporate Transparency Act, offers an opportunity for companies to take a proactive approach against fraud, bribery & Corruption, to reduce the threat & minimise the risk.

If you or your organisation require assistance in understanding the new legislation, if and how it will affect you, or wish to review your policies/procedures, need to deliver awareness & education or undertake risk assessments please get in touch.

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