

# Corporate Crime Horizon Scanning – the potential impact of the change in government

23 July 2024

---

The introduction of a new Labour government, particularly one with such a strong majority, will no doubt bring with it huge shifts in policy and approach on a number of core issues impacting how firms operate in the UK. However, given the cross-party focus on decreasing the impact of fraud and increasing the ability to hold corporates liable, we have considered how this change is likely to impact the course of corporate criminal liability and what firms should be thinking about to make sure that they are future-proofing themselves as much as possible.

The below commentary is based on the Labour manifesto, comments made by Labour MPs in Parliament and the content of the Economic Crime Manifesto II. This was a cross-party manifesto produced by two all parliamentary groups, the APPG for anti-corruption and responsible tax, and the APPG for fair business banking. The creation of the manifesto was chaired by long-standing Labour MP, Dame Margaret Hodge, who was elevated this month to the House of Lords. With cross-party support, and a commitment from Labour to put in place and "deliver a comprehensive plan to get a grip on fraud at every level", it appears to us likely that the issues identified in the Economic Crime Manifesto II will be top of an economic crime agenda.

It should be noted that, although references to corporate crime priorities were not included in the King's speech at the opening of Parliament, we will review with interest the draft Crime and Policing Bill when published, to understand what of the below is included.

## Attribution of corporate criminal liability

The Economic Crime and Corporate Transparency Act (**ECCTA**) has had a huge impact on how criminal liability can be attributed to firms. No longer is it the case that the "directing mind and will" of an organisation has to be found to have the appropriate level of knowledge and involvement in the misconduct (something incredibly difficult to prove in practice) but, since September, corporate liability for economic offences listed in the ECCTA schedule can be established for [offences committed by a senior manager](#) acting within the scope of their authority.

## What next for corporate liability?

The previous government had proposed extending liability to all offences, a huge leap forward for corporate liability. This expansion was contained in the Criminal Justice Bill 2024 and proposed to simply

remove the limitation to economic crime offences contained within ECCTA. The expansion to the Bill reached Report Stage in May 2024 but, given the dissolution of Parliament shortly thereafter, the Bill will no longer be proceeding. It remains to be seen whether the new government will seek to introduce a similar expansion in the newly announced Crime and Policing Bill.

It is possible that there may be some unanticipated consequences as a result of further expansion outside economic crime offences (in particular, whether it might bring in corporate liability for misconduct by senior managers in the workplace, including harassment and other violent or sexual offences). We will keep the passage of any new Bill under review in order that we can advise our clients accordingly.

Similarly, some Labour MPs, during the passage of the "failure to prevent fraud" offence (see below), had argued for a more general "failure to prevent economic crime" offence as a much wider alternative. It will be interesting to see whether this wider "failure to prevent" liability will be resurrected as part of any new package of economic crime measures.

## **Corruption and whistleblowing**

There have been minimal changes to the law and policy relating to corruption in recent years. That may be set to change given that earlier this year Britain received its lowest ever score in Transparency International's Corruption Perceptions Index, and the recent APPG report on Corruption and Responsible Tax noted that the UK bears responsibility for enabling corruption on a global scale. It will be interesting to see, given Keir Starmer's comments about tackling "cronyism", in particular "VIP fast lanes...kickbacks for colleagues...revolving doors between government and the companies they regulate", whether any new or tightened rules in respect of corruption involving public officials will be introduced.

## **What next for corruption and whistleblowing?**

Labour has previously voiced its commitment to tackling corruption and in May 2024 repeated calls for an international anti-corruption court, as well as voicing an intent to make the UK the "anti-corruption capital of the world". It has also recently discussed the prospect of offering rewards to whistleblowers in sanctions-related cases whereby whistleblowers could be incentivised with receiving up to £250,000 of any fine imposed by the Office of Financial Sanctions Implementation. Whilst there has been no mention of this being extended to bribery-and-corruption-related cases, the Serious Fraud Office has recently made statements indicating that it would consider rewarding whistleblowers in a bid to reform how complex economic crime is investigated and prosecuted.

## **Corporate transparency**

Recent years have seen a drive toward increased corporate transparency to help regulated firms better manage their financial crime risk, including their AML and sanctions risk. Key here was the introduction of the Overseas Entities Register, requiring overseas firms owning or holding qualifying leases on UK property to register the ultimate beneficial owner of that entity. More recently, far more onerous requirements are being applied to the information required to be provided to Companies House, and we understand that Companies House is itself now increasing staffing within its enforcement and legal functions and undertaking significant review of the Register, with a mandate to prosecute where required.

## What next for corporate transparency?

What has been described in the Economic Crime Manifesto II as a 'loophole' in the application of registration requirements of the Overseas Entities Register means that in many instances overseas owners of UK property are still able to use trust structures to hide the ultimate beneficial owner of that property. This was partially but not fully resolved by new provisions in the Economic Crime and Transparency Act (ECCTA) which came into force in March of this year, which removed the requirement for ultimate beneficial owners of trusts to be subject to their own independent disclosure requirements in the country of establishment.

In addition, even where trusts and their ultimate beneficial owners are subject to registration, and beneficiaries of the trust are reported, beneficial ownership of property (rather than the trust) does not appear currently on the public register (although is now disclosable to law enforcement), making due diligence more difficult for private companies. Combined, this has clearly not as a result had the impact anticipated of identifying UK-held assets by oligarchs or kleptocrats who may be designated persons for the purpose of sanctions.

It is likely, in our view, that the next government will seek to further increase both registration and access to information held on the register. In particular we expect the new Secretary of State to exercise powers provided by the ECCTA to issue further regulations to establish a pathway for private parties to access information on the register. Although there is no action required now on this point, firms should be conscious of these limitations, in particular when relying on information held on the register, and should consider whether any additional due diligence is required when dealing with trust structures.

In terms of Companies House liability, firms should take particular care moving forward to ensure that all information provided is accurate and verified to minimise risk of prosecution.

## Fraud

Under the previous government, steps had been taken to tackle fraud – an offence which comprises approximately 38% of all reported crimes in England and Wales. This had included the introduction of additional specialised police investigators, a tightening of Companies House rules to increase transparency and a raft of legislation tackling different types of fraud, expanding compulsory reimbursement and introducing a new "failure to prevent" offence. The "fraud strategy" was underpinned by the introduction of the Economic Crime Levy, which requires substantial payments from corporate firms deemed to pose a higher risk of financial crime (i.e. those caught by the Anti-Money Laundering Regulations).

## What next for fraud?

Labour has underlined its commitment to continue to apply pressure in this area. In its manifesto, Labour indicated that it would introduce an expanded fraud strategy and, in particular, its intention to work with technology companies to address changing technologies used by criminals to facilitate fraud.

Of course, the next immediate cause for concern for all "large" firms within the ECCTA definition should be in ensuring that they have appropriate systems and controls in place to manage their fraud risk. Now

that the government is in place, we would expect to see the results of the "quasi-consultation" (which has not been made generally available to date) to be published, triggering the start date of the "failure to prevent" offence.

In our view, even smaller firms should not rest on their laurels in respect of the new offence. There is clear cross-party support for an expansion to all medium and small party firms, which we would expect to be rolled out in the future.

## **Anti-money laundering**

Recent years have seen efforts to tighten AML controls within the UK focused on greater regulation and enforcement of AML supervising firms (in particular with HMRC and the Gambling Commission increasing the range and type of enforcement action against its regulated firms), but there is still a clear divide in approach, volume and nature of investigations and penalties imposed between supervised sectors.

## **What next for AML?**

This year, a consultation was concluded which looked at how to reform the AML Regulators. With responsibility spread across three statutory and 22 professional body supervisors, the enforcement of the AML Regulations is often inconsistent, and there has been far greater focus on some industries than others. We would anticipate that cross-party support in this area is likely to result in significant restructuring of the AML regulatory framework – this is likely in our view to eventually lead to increased enforcement against professional enablers, in particular lawyers, accountants, estate agents and corporate services providers, who should all take the time to ensure that their systems in place are compliant with the Regulations and fully implemented.

One high-profile issue has been a proposed expansion of the money laundering regime to cover further high-risk sectors, including private schools, universities, developers, all letting agencies (letting agency regulation currently only applies to those generating single leases of €10,000 per month) and commodity traders.

There is also some talk about extending the "failure to prevent" offence to cover money laundering offences, to cover those firms that do not currently have specific obligations (and therefore no corresponding liability for non-compliance) under the AML Regulations. Given the existing obligations targeted at higher risk firms, and the introduction of the identification doctrine, we do not deem that this specific expansion is likely to be an immediate priority, but it is worth unregulated firms noting this as part of a long-term risk for the purpose of horizon scanning and considering whether there are any proportionate AML controls that should be in place for their specific business model.

## **Sanctions**

In recent years, we have seen an increase in global conflicts and political tensions resulting in a rapid escalation of international economic and trade sanctions. The previous government focused on establishing greater regulation (in line with its global partners such as the EU and the US) and enforcement of the sanctions regulations. Key developments have included the sanctions regimes in

relation to Russia and Belarus, and the increasing trade tensions (and restrictions) between "the West" and China. The wide scope of Russia sanctions has meant that the business operations of more companies than ever before are affected by sanctions, and the previous government has supported compliance by publishing frequent guidance on the application of sanctions.

## **What next for sanctions?**

The Economic Crime Manifesto II suggests that a cross-party proposal which ought to be considered is a move from the "freezing" to the "seizing" of assets. Such a proposal is likely to prove highly controversial, and would have to be undertaken in a way that avoids clashing with principles of natural justice and potential human rights violations. We will keep abreast and involved in the development in this area and update our clients on the direction of travel.

There is also strong support for the greater enforcement of sanctions violations by OFSI, mirroring perhaps the tough stance and significant action taken by equivalent US agencies. OFSI has received a material increase in resourcing since the Ukraine Crisis, which will underpin this drive. We also anticipate for regulated firms an increase in enforcement by the FCA in respect of sanctions systems and controls.