



GLOBAL COMPLIANCE

# Failure to Prevent Fraud Risk Assessment Roadmap



For more information on this roadmap, and any of the others in our Global Compliance Roadmap series, please get in touch with the Osborne Clarke team [here](#).



# Introduction

**The UK's Economic Crime and Corporate Transparency Act 2023 (ECCTA) enacted a new corporate offence of failure to prevent fraud. The only defence to this offence requires a commercial organisation to demonstrate that it had reasonable procedures in place to prevent fraud.**

Under the offence, an organisation may be criminally liable where an employee, agent, subsidiary or other "associated person", commits a fraud intending to benefit the organisation or a person to whom the associate provides services on behalf of the organisation, and the organisation did not have reasonable fraud prevention procedures in place. There is no need for a prosecutor to prove that senior management was involved in or knew about the fraud.

The offence can apply to overseas (non-UK) organisations if the fraud is committed in the UK or targets UK victims.

The starting point for any commercial organisation wishing to ensure that it has reasonable procedures in place is to conduct an objective and proportionate risk assessment to identify any fraud risks that it may face.

That risk assessment should not be viewed as a one off exercise, but should be repeated at regular intervals, including where developments in the business may alter the overall risk profile of the organisation.

Set out below is a 'roadmap' of questions designed to identify information that will enable a business to determine what fraud risks it may face.

Having answered these questions, an assessment can then be made of the fraud risks faced by the commercial organisation and the extent to which its policies and procedures reasonably address those risks. Thereafter, any further necessary measures can be adopted and implemented with a view to ensuring that the business has reasonable procedures in place that are ECCTA compliant.



# 1. Business size, exposure, associated persons

## 1.1 Business size

- Is your organisation a 'Large Organisation', meaning it meets two of the following:
  - (i) Turnover of more than £36million;
  - (ii) Balance Sheet total of more than £18 million; or
  - (iii) More than 250 employees.
- Is your organisation a parent of a group that meets two of the following:
  - (i) Turnover of more than £36million;
  - (ii) Balance Sheet total of more than £18 million; or
  - (iii) More than 250 employees.

## 1.2 Associated persons

- Who are your organisations' associated persons?  
Does your organisation:
  - (i) Have employees?
  - (ii) Use agents?
  - (iii) Have any subsidiaries?
- Does the organisation engage with any third party entity which performs services on its behalf, for example, where you business is outsourced?

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## 2. Fraud risk

The UK Government guidance highlights the following useful questions in assessing the risk of fraud:

### 2.1 Opportunity

- Do the associated persons have the opportunity to commit fraud?
- Which departments or roles potentially have the greatest opportunity to commit fraud in scope of the offence, for example finance, procurement, investor sales, marketing?
- Are there risks associated with taking on agents or contractors?

### 2.2 Motive

- Does the reward and recognition (e.g. commissions or bonuses) incentivise fraud?
- Are there particular financial pressures on the organisation, for example by an upcoming merger, contract raising, loan, permit or licence renewal, or financial reporting dates?
- Do time pressures encourage behaviour that is potentially fraudulent?

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## 3. Assessing your current approach to fraud

### 3.1 Policies and procedures

Do you have:

- (i) An Anti-Fraud policy?
- (ii) An ABC Policy?
- (iii) A Failure to Prevent Facilitation of Tax Evasion policy?
- (iv) A Gifts & Hospitality Policy?

(vii) A Supplier Code of Ethics?

(viii) A Whistleblowing Policy?

(ix) Any other policies which prevent or prevent fraud from occurring (including a policy, due diligence policy, the disciplinary policy)?

Is compliance with the procedures and policies recorded and monitored?

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## 4. Reasonable procedures

The UK Government has issued guidance on **reasonable procedures to prevent fraud**, detailing elements that could be considered sufficient to demonstrate effective anti-fraud policies and procedures. The guidance identifies six principles:

### 4.1 Top level commitment

- To what extent, and in what ways, does your Board/senior management communicate and endorse the organisation's stance on preventing fraud?
  - (i) Is there a commitment to rejecting fraud even if means losing business?
  - (ii) Is there an open culture where staff feel empowered to

### 4.2 Risk assessment

- Does your organisation already have risk assessments relating to fraud and other economic crime?
- How often are such risk assessments updated?
- Did any previous consideration of the factors identified by the guidance on reasonable procedures to prevent fraud (e.g. was there focus on the fraud and rationalisation)?
- Do you utilise relevant internal or external sources when conducting risk assessments?

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## ● 4. Reasonable procedures

### 4.4 Due diligence

- What processes do you have in place to undertake due diligence (fraud specifically and/or more generally) on, and assess the risk of, new and existing employees, agents or subsidiaries and other associated persons?
- Have you relied on existing due diligence procedures? If so, did your organisation review and update the procedures with specific reference to fraud risks?
- Do you use any independent third party due diligence service providers (entities who perform independent checks on relevant employees)?
- Does your organisation provide relevant training to relevant employees?
  - (i) How often is the training provided?
  - (ii) Does this differ for persons with obvious fraud risks?
  - (iii) Is the training evaluated and, if so, how often? What is to be achieved?
  - (iv) Are training records complete and up to date?
- Do you require personnel to report suspicious activity?

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## ● 4. Reasonable procedures

### Fraud investigation

- How does your organisation analyse procurements, payments and invoicing? How quickly are discrepancies flagged and to whom?
- What processes are in place for detecting unauthorised access to data?
- What factors would trigger an internal fraud investigation and how is this documented?
- What are your arrangements for investigating potential fraud?

### Implementation of anti-fraud

- Do you monitor the implementation of fraud prevention measures?
- What information is collected to support the anti-fraud policy?
- Is information detailing fraud reported to a senior member of the senior management?
- Is compliance with the anti-fraud policy regularly reviewed by the Board, and if so, how often?

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## 5. Specific concerns

- Have any potential fraud issues been identified as part of any internal or external audits conducted within the past 5 years? If so, how were these dealt with?
- Have any whistleblower reports referred to potential fraud issues within the past 5 years? If so, how were these dealt with?
- Are you aware of any allegations, inquiries, investigations, prosecutions or other actions by a State regulator or prosecutor which may indicate a fraud issue connected to your organisation or a third party that performs services for or on your behalf?

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# Contacts



**Jeremy Summers**  
Partner

T +44 20 7105 7394  
jeremy.summers@osborneclarke.com



**Chris Wrigley**  
Partner

T +44 117 917 4322  
chris.wrigley@osborneclarke.com

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