

White Collar Defense and Investigations



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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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UK White Collar Crime Outlook

Below is a summary of recent developments and enforcement trends in the UK white collar crime space in the first quarter of 2024.

I. New Legislation

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) became law in the UK in October 2023, and although certain parts are not yet fully in force, the act contains key legislative changes around which companies should anticipate making related updates to their compliance programs. The updates include the following:

- **Changes to the “identification principle” to include a wider group of senior executives for the purposes of establishing corporate liability.** The ECCTA has expanded the identification principle so that a company will be guilty of certain criminal offences, including bribery, tax, money laundering, fraud and false accounting offences if the offence is committed by a “senior manager” acting within the actual or apparent scope of their authority.
 - The term “senior managers” will likely cover those who are in the direct chain of management or who are in strategic or compliance roles, and may include company directors, senior officers who are not board members and potentially individuals in departments such as HR, in-house lawyers, and regional or division managers in national organisations.
 - To help mitigate the risks of offences being committed by a “senior manager”, companies should consider whether their structures provide adequate oversight and if the policies and training in place are appropriate and understood at all levels of the organisation.
- **New corporate offence of “failure to prevent fraud”.** Large companies will be found criminally liable if they fail to prevent fraud by “associated persons”.
 - This is a new strict liability offence, modelled on the “failure to prevent” offences previously introduced in the UK (*i.e.*, failure to prevent bribery and the facilitation of tax evasion), with only two defences: (i) the company was the intended victim of the fraud; or (ii) the company can demonstrate that it had reasonable fraud prevention procedures in place, or that it was reasonable not to have such procedures.
 - Government guidance is pending and, once that is published, the offence will come into force. Companies should consider conducting appropriate risk assessments, updating policies and procedures and rolling out employee training to mitigate risk from this new offence.
- **Increased Companies House powers.** The aim of the new powers is to improve the accuracy and quality of the data on Companies House registers.
 - Changes enacted to date include: (i) greater powers to query information and request supporting evidence; (ii) “stronger checks” on company names; (iii) new rules for registered office addresses (all companies must have an “appropriate address” at

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all times and will not be able to use a PO Box); (iv) greater powers to tackle and remove factually inaccurate information; and (v) the ability to share data with other government departments and law enforcement agencies.

- See our previous client alert [“Economic Crime and Corporate Transparency Act 2023 – Key Developments”](#) for summaries of the key changes.

II. Financial Conduct Authority (FCA) Developments

- **The FCA is considering a new approach to publicising enforcement investigations.** The FCA has proposed changing how it publicises enforcement investigations to increase transparency about its enforcement work, share resulting deterrent effects and disseminate best practices.
 - Key changes proposed include (i) publicly announcing when the FCA has opened an enforcement investigation, including the identity of the subject of the investigation, and (ii) publishing updates on the investigation if the FCA considers doing so to be “in the public interest”.
 - The consultation closed at the end of April 2024.
- **The FCA is collecting data on the scope of nonfinancial misconduct.** On 6 February 2024, the FCA issued a survey (under its formal powers) to regulated Lloyd’s managing agents, London market insurers and insurance intermediaries, compelling the recipients to provide information related to incidents of nonfinancial misconduct (NFM) between 2021 and 2023.
 - The survey requested high-level, aggregated statistics on: (i) the number of NFM incidents recorded by type/category (e.g., sexual harassment, bullying or discrimination); (ii) the method by which these incidents were detected (e.g., whistleblowing or firm surveillance); (iii) the outcomes of those incidents (e.g., dismissal of employee, written warning or dismissal of unsupported complaint); and (iv) the number of further outcomes recorded (e.g., nondisclosure agreements and employment tribunals).
 - Although it is not yet clear how the FCA will use the information obtained from survey recipients, in requesting the survey, the authority stated that it “expect[s] firms to have effective systems in place to identify and mitigate risks relating to nonfinancial misconduct. Should allegations or evidence of nonfinancial misconduct become known, we expect a regulated firm to take them seriously, have the internal procedures to investigate them promptly and fairly, and to take appropriate action when allegations are upheld”.

- FCA regulated and non-FCA regulated entities alike should be attune to the concerns and expectations of the FCA and reflect upon their systems and procedures for handling NFM allegations.

III. A ‘New Dawn’ for the Serious Fraud Office (SFO)

- **The SFO is increasing the frequency of dawn raids.** In the first three months of his tenure, Nick Ephgrave, the new SFO director, has overseen more dawn raids than the office conducted in the previous three years, and has publicly stated that the SFO will increasingly use dawn raids to provide momentum to an investigation and obtain evidence quickly.
 - Companies should ensure that personnel are trained for the possibility of a dawn raid and are thoroughly briefed on the correct procedures to follow.
- **Incentivising whistleblowers is on the agenda.** Director Ephgrave has discussed the SFO’s consideration of incentivising whistleblowers, which would be a step toward the U.S. enforcement approach.
 - On 10 January 2024, Damian Williams, the U.S. Attorney for the Southern District of New York (SDNY), announced the creation of his office’s Whistleblower Pilot Program, which provides notice of the requirements for individuals who wish to self-disclose criminal conduct and cooperate with the government in exchange for a nonprosecution agreement.
 - See our previous article [“US Attorney for SDNY Launches Whistleblower Program To Encourage Self-Disclosure by Individuals”](#) for more details.
 - Reiterating his commitment to explore options for incentivising whistleblowers in the UK, on 13 May 2024, Director Ephgrave, speaking before the House of Commons’ Justice Committee, argued that whistleblowers in the UK should be paid for providing “smoking gun evidence” of wrongdoing from any corporate settlement they help bring about, in order to compensate them for the risk of coming forward.
 - Regardless of how the incentivisation of whistleblowers develops in the near future, the SFO’s renewed interest in whistleblowing serves as a timely reminder for companies to review policies and procedures to ensure that they align with best practice.
- **The SFO has been granted expanded pre-investigative powers.** The ECCTA recently extended the SFO’s pre-investigative (Section 2A) powers enabling the SFO to compel individuals and companies to provide information

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before a formal investigation has been opened. This power will no longer be limited to suspected international bribery and corruption and will extend to circumstances where the SFO has “reasonable grounds to suspect” that an offence involving serious or complex fraud, including domestic bribery or corruption, has taken place.

- **The SFO announced its goals for the next five years.**

On 18 April 2024, the SFO launched its Strategy 2024-2029, setting out the organisation’s direction and goals for the next five years. Among other things, the strategy envisages building the SFO’s capabilities to monitor developments in technology and criminality, as well as its cryptoasset competences, and developing the SFO’s own use of machine learning and AI across the criminal justice system.

- The strategy also includes a commitment to “explore” incentivising whistleblowers, echoing Director Ephgrave’s previous comments on this subject.
- At the international level, the strategy involves a commitment to strengthen operations through the deployment of Criminal Overseas Production Orders (which we discussed in a previous [Cross-Border Investigations Update](#)) and to enhance the SFO’s global engagement strategy.

In Case You Missed It

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