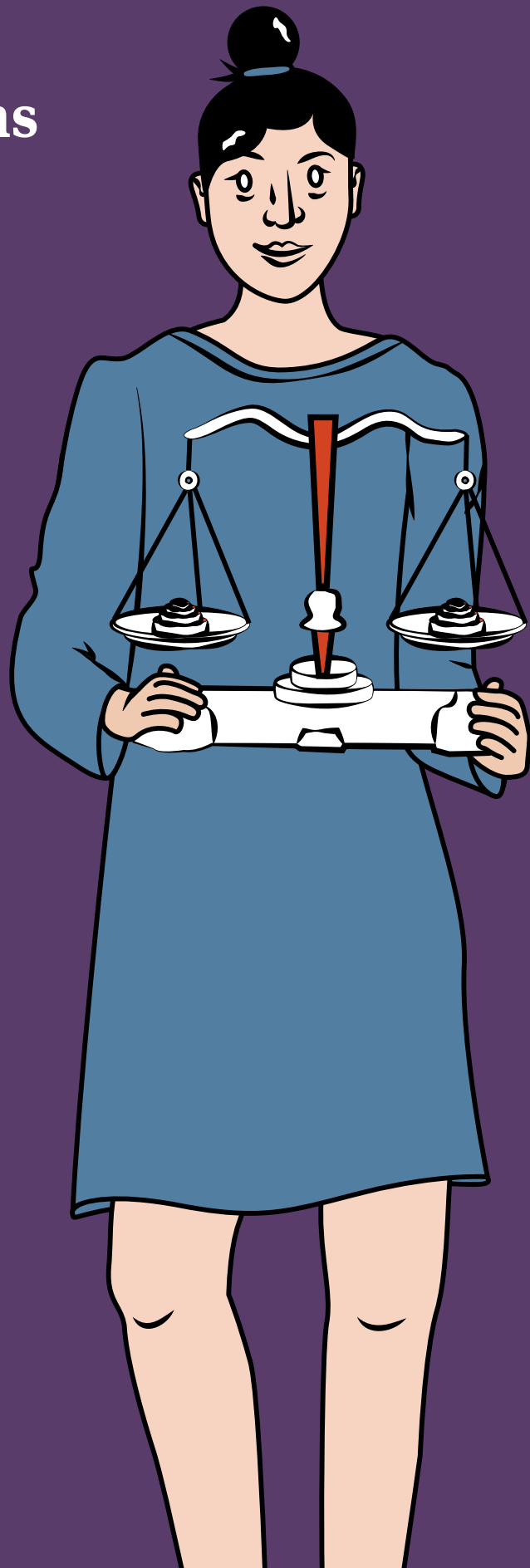


# Capital Law

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## Business Crime and Investigations



# The landscape

*On the back of Covid -19, Russia's invasion of Ukraine and high-profile corporate failures, the nature of economic crime is changing. Tackling economic crime is an ongoing challenge for the UK's system of regulation, law enforcement and government, as well as for corporate and financial institutions.*

Here we examine recent and upcoming changes to improve the prevention, detection and reporting of regulatory infringements and economic crime alongside changes that may affect you and your business.

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## **Who does this affect?**

Companies in regulated sectors will be exposed to new legislation as efforts increase to address the rise in economic crime. They will also be subject to enhanced regulation being introduced in response to this rise. Any company may find itself affected, as criminals take advantage of behavioural changes caused by the pandemic in particular.

## **What is changing?**

Lawmakers and regulators are taking action to protect domestic and overseas consumers, investors and markets, aiming to prevent companies from becoming targets of criminal activities, and to implement more stringent oversight designed to identify those responsible and hold them to account.

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## **The response**

### **Financial Conduct Authority (“FCA”)**

Through its consumer investments strategy, the Financial Conduct Authority aims to set higher standards to prevent harm, which includes increased monitoring of firms approving financial promotions. It is working to establish a regulatory strategy for cryptoassets with the government and other partners. It also plans to put more firms into insolvency where they cause harm and has introduced a Consumer Duty requiring firms to act to deliver good outcomes to retail customers.

### **Audit, Reporting and Governance Authority (“ARGA”)**

From January 2024, the Audit, Reporting and Governance Authority replaces the Financial Reporting Council and will have powers to bring disciplinary enforcement action against Directors for breaches of new behavioural standards, including unlimited fines and temporary bans. There will be enhanced audit requirements to private companies with more than 750 employees and an annual turnover of £750 million, including for AIM listed companies, LLPs and parent companies.

### **Insolvency Service**

The insolvency service will increase its investigation capability through the delivery of new forensic computing facilities, thoroughly investigating misconduct and taking necessary action. It will also work with Companies House and the Department for Business and Trade to improve the integrity of the companies register.

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# The landscape

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## Companies House

The ability to investigate and enforce will be enhanced through increasing its powers to become a more 'active gatekeeper' in being able to check, remove or decline information submitted to, or on the register. It will be able to cross check the data it holds and share its information where it has evidence of suspicious behaviour, with public and private sector bodies.

## Recent and imminent changes in legislation

The Economic Crime (Transparency and Enforcement) 2022 Act and Economic Crime and Corporate Transparency Act 2023 are:



Creating new offences such as failure by a company to prevent fraud, theft or false accounting offences.



Tightening rules on registering limited partnerships, make them maintain a UK connection, and make the deregistration process simpler.



Reforming Companies House to prevent companies from laundering through the UK and improve law enforcement's ability to investigate the origin of property and recover the proceeds of crime.



Creating a register of overseas companies owning or buying UK property, to enable law enforcement to crackdown on foreign criminals using UK property to launder money.



Increasing the use of sanctions and Unexplained Wealth Orders by increasing the time law enforcement can review responsive material, amending cost rules and enabling orders to be sought against property held in trust and complex ownership structures.



Providing clarification to the law of corporate criminal liability, and bringing the law up to date to better reflect the structure of modern corporations and make the test for identifying those accountable for committing economic crimes more practical.

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# How does this affect you?

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Between 2019 and 2022, the FCA delivered benefits worth £28.7 billion and compensation worth £1.4 billion through enforcement action, confiscations and penalties on firms and individuals. As part of its 2023/24 plan, the FCA is taking on new legislative powers and strengthening how it detects harm.



Regulators, like the FCA and the Insolvency Service, are harnessing the power of technology to enhance their enforcement capabilities, increasing their ability to combat various issues such as insider dealing, market manipulation, money laundering, fraud, and misconduct.



New approaches to financial regulation and a new regulator in ARGA means firms should be investigating the transactions they are routinely facilitating, safeguarding the availability of sufficient time and resources to do so, and ensuring compliance with new regulations and legislation.



Enhanced guidance issued by the FCA is making it incumbent on a company's Board to be proactive in actively risk managing fraud, however there are many positives to improving corporate governance. Improvements in the control environment and risk management provides opportunity to improve quality, efficiency, and senior management insight.



New ARGA requirements are coming in 2024 for public disclosures by the directors of some companies including a director's statement on fraud, and a director's statement on responsibility. This means stakeholders will expect more transparency and disclosure of internal controls and reporting of steps taken to prevent, detect, and disclose fraud.



Senior executives and managers will need to take proactive steps in response to new government legislation, so they are aware and check systems are in place to prevent fraud, bribery, and money laundering. Early intervention can mitigate the involvement of regulators or law enforcement agencies like the SFO, or place businesses in a position of control should they make contact.



In five years' time, the government intends to evaluate whether new requirements for an audit and assurance policy and a resilience statement will have the desired effect in supporting auditor activities in detecting fraud, and assessing the effectiveness of relevant fraud controls in businesses.



An increasingly complex business environment, a focus on ethical behaviour (for example, whistleblower protection) alongside modifications to regulations and accompanying extra scrutiny, means more companies are finding themselves subject to FCA and other regulatory investigations and proceedings.

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# How we can help you

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**If you have uncovered financial misconduct in your business or are facing investigation, we can assist you.**

## **Early intervention**

We can guide you through the early stages to investigate what has happened, who is responsible and how best to respond. We will advise you how to preserve and gather best evidence, whether to pursue a civil, criminal or parallel remedy, and whether to report the suspected misconduct. Early intervention is crucial.

## **Problem solving**

We are adept in investigating suspicions of all forms of white-collar crime and regulatory breaches. Our versatile and experienced investigations team will help you resolve the problem swiftly and effectively.

## **Navigation**

Our team will work closely with you throughout each stage to assess the situation and navigate a pathway to ensure you reach your desired outcome.

## **Communication**

We can help you engage and manage dialogue with regulators and law enforcement to assist in achieving the best possible result for you.

## **Protection**

We will always ensure that your rights are completely protected to minimise disruption to your business activities.



**We will work to devise the most cost-effective course of action and deliver the best strategic advice during every phase of the investigation.**

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## **Internal Investigations**

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Our experienced team can advise on whistleblowing, employee allegations, due diligence, gathering third party information, supplier grievances and audit findings. We'll provide advice on data preservation, collection and review, legal professional privilege and investigation scope. Where misconduct is suspected or discovered, we can work with in-house compliance teams or co-ordinate investigations ourselves and ultimately advise on whether to self-report to law enforcement agencies such as the SFO.

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## **Regulatory Investigations**

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We can assist with requests for information, skilled persons reviews and supervisory and enforcement dialogue with regulators. Our specialist team can help you review your firm's compliance, recommend any enhancements required, and advise on appropriate strategy to avoid and where necessary defend enforcement actions.

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## **Law Enforcement Investigations**

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We can advise and assist you to manage all aspects of criminal corporate investigations and proceedings commenced by law enforcement agencies on a wide range of financial subjects. We are highly accomplished in providing legal advice and options should you be faced with an authority utilising its powers of compulsion to provide material or attend an interview. We are equally adept in advising whistleblowers on raising allegations of serious misconduct within corporations and external authorities.

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## **Where you are the Victim of Crime**

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Where you have suffered as the victim, we will fully investigate your claim to determine culpability and identify assets linked to the proceeds of suspected wrongdoing. We are well practised in seeking redress for our clients, such as advising on and applying for freezing orders and formulating other solutions for recovery.

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# Our experience

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Representing a finance brokerage in a complex FCA investigation, concerning its alleged role in multinational dividend arbitrage trading.

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Providing advice to an investor in a retirement scheme who suspected fraudulent activity on behalf of the directors of the formerly FCA regulated company at the heart of the scheme.

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Acting for a group of 140 investors who invested over £17m in an unregulated collective investment scheme in breach of the Financial Services and Markets Act 2000. The scheme involved the purchase of units in care homes in England and Wales over a period of 5 years.

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Providing ongoing strategic advice in negotiating the terms of a large scale past business review and redress exercise with the FCA involving several hundred investors relating to fraudulent pension investments.

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## **Significant experience of using legislative tools and investigating cases brought by the Serious Fraud Office, including:**

Three LIBOR benchmark manipulation cases investigating corporates and individuals of extensive conspiracy to defraud offences across several jurisdictions and co-ordinating with domestic and overseas law enforcement and regulators including the US DoJ.

Investigation and prosecution of the Fund Manager of a US\$639 million hedge fund in a three-month trial at Southwark for fraud, forgery, fraudulent trading and false accounting offences.

Investigation and prosecution of a UK based subsidiary of a multinational commodity trading and mining company in relation to oil trading and related activities.

Being the first to successfully issue a request for mutual legal assistance to Sierra Leone for incorporation and banking data in relation to suspected bribery offences involving a politically exposed person.

Providing training to investigators on evidence gathering and on the different stages of investigating and prosecuting complex financial crime, including pre-case acceptance, investigation, charging, trial and post-trial stages.

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# Meet the team

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**Get in touch for an initial chat.**







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