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WHITE PAPER

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The UK Economic Crime and Corporate Transparency Act 2023: Why Private Equity Sponsors Should Be Paying Attention

When Nick Ephgrave QPM, director of the Serious Fraud Office, addressed a group of corporate leaders at Jones Day's London Office in May 2025 about the UK's Economic Crime and Corporate Transparency Act 2023 ("ECCTA" or "the Act"), he was clear about its overarching goal: culture change. The new corporate offence of "failure to prevent fraud" established by ECCTA was intended, he said, to force a shift in organisational mindsets so that improved fraud prevention measures go from being a "nice to have" to the default.

Quite how much the potential impact on the private equity ("PE") sector was at the forefront of lawmakers' thinking is perhaps open to question. Few references were made to it in the various debates on the new provisions. The net result, however, is the same: ECCTA is poised to reshape the compliance landscape for PE sponsors, general partners, funds and portfolio companies.

With the new strict liability offence coming into force on 1 September 2025, private equity professionals must now grapple with the risk of uncapped fines and reputational damage extending well beyond the direct perpetrators of fraud, to encompass the entire PE structure, including parent funds, portfolio companies and, in some cases, general partners.

This *White Paper* explores the key provisions of ECCTA and its application to private equity structures. It also sets out the practical steps that PE investors and practitioners can take to mitigate risk and ensure compliance.

THE SCOPE OF ECCTA: HOW COULD PE STRUCTURES BE CAUGHT?

At the heart of ECCTA is the new corporate offence of failing to prevent fraud. The Act applies to large organisations, defined as incorporated bodies or partnerships that meet at least two of the following criteria: more than 250 employees, turnover exceeding £36 million, or assets over £18 million. Crucially, this analysis is conducted on a groupwide basis, meaning that subsidiaries are included in the employee, turnover and asset count if they fall within the definition set out in section 1159 of the Companies Act 2006.

For private equity, this means that not only large portfolio companies but also the PE funds and their general partners may be caught if, when grouped together, they meet the relevant thresholds. The grouping rules are broad: a portfolio company is likely to be treated as a subsidiary of a PE fund if the fund holds a majority of voting rights, has the right to appoint or remove a majority of directors, or otherwise controls the company through agreements with other shareholders.

Importantly too, small portfolio companies who might otherwise be outside the net given their small scale will be liable to prosecution if they are viewed as a subsidiary of the large organisation parent fund.

ASSOCIATED PERSONS: FOR WHOSE FRAUD CAN PE STRUCTURES BE LIABLE?

A defining feature of ECCTA is its focus on the actions of "associated persons". This term is interpreted widely to include employees, agents, consultants, advisers and anyone providing services for or on behalf of the organisation. In the PE context, this could encompass a broad range of individuals and entities, from portfolio company staff to external service providers.

Where a portfolio company is treated as a subsidiary of a PE fund, an agent acting on behalf of that company may be considered an associated person of the wider group. The practical effect is that a fraudulent act committed at the portfolio company level could result in criminal liability not only for the portfolio company itself but also for the PE fund and, potentially, the general partner.

INTENTION TO BENEFIT: WHICH TYPES OF FRAUD ARE IN SCOPE?

ECCTA's reach is further extended by its approach to the "intention to benefit" test. The Act covers all forms of base fraud by an associated person, including fraud by false representation, abuse of position and obtaining services dishonestly. For liability to arise, the fraud must be intended to benefit the organisation or its clients.

However, the threshold is low: the intention to benefit does not have to be the sole or dominant motivation and the benefit does not need to be realised.

For example, if an employee of a portfolio company fraudulently secures a contract, the intention to benefit the company—and, by extension, the PE owner through increased revenues—may be sufficient to trigger liability. This broad interpretation significantly increases the risk profile for PE structures.

THE UK NEXUS: WHEN DOES ECCTA APPLY?

ECCTA has exceptionally broad jurisdictional reach. The requirement for a UK nexus is met where the fraud is committed by UK employees, takes place in the UK, or where any gain is realised in the UK.

Importantly, a fraud committed by a non-UK national working for a portfolio company headquartered and operating abroad would be caught by ECCTA if one of the victims was British.

The net effect is that even international PE structures with limited UK operations can be caught.

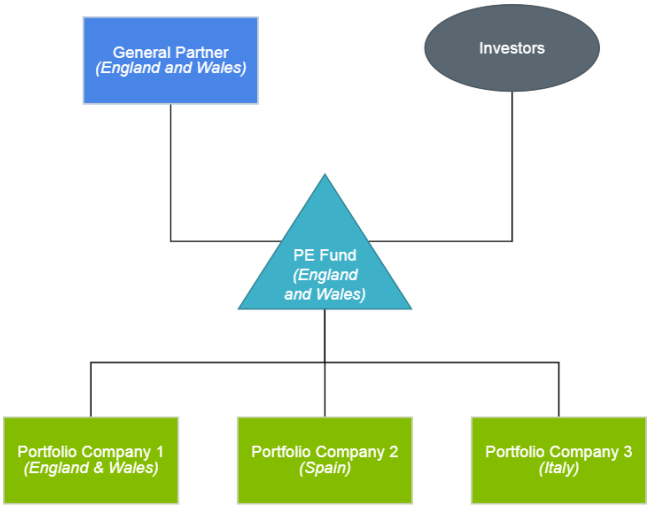
WORKED EXAMPLES: HOW PE STRUCTURE MAY BE EXPOSED

To illustrate the practical implications, consider the following scenarios. Each assumes, as a base position, that each of Portfolio Company 1 and 2 has 300 employees, but Portfolio Company 3 does not meet any of the criteria to be a "large organisation".

Which of the entities in this structure is a "large organisation"? Portfolio Companies 1 and 2 would qualify as "large organisations" due to employee count.

The PE fund, the controlling investor of Portfolio Companies 1 and 2, has 25 employees. However, it would also qualify as it has the right to appoint or remove a majority of the directors of Portfolio Companies 1 and 2.

Whether the general partner would constitute an indirect parent of Portfolio Companies 1 and 2 (and therefore be grouped with them) would depend on the degree of control over the PE fund's operations. Broadly, if the general partner can be removed by the investors in the PE fund without cause, it is unlikely to be a parent company under s.1159 of the Companies Act 2006 (and vice versa).



EXAMPLE 1

A UK-based employee of Portfolio Company 1 fraudulently wins a contract tender on the basis of false representations.

Large Organisation?	Associated Person?	Intention to Benefit?	UK Nexus?
Portfolio Company 1, the PE fund and possibly the general partner could all potentially be liable as "large organisations" for the reasons stated above.	The employee of Portfolio Company 1 is an "associated person" of Portfolio Company 1, the PE fund (as a parent due to grouping) and potentially the general partner.	Whilst the dominant intention would appear to be a benefit to Portfolio Company 1, there could also be an intention to benefit the PE fund because the revenues from the contract may be distributed up to the PE owner and the general partner who may benefit from carry arrangements or increased management fee.	There is a UK nexus as the fraud was committed by a UK-based employee.

Each of Portfolio Company 1, the PE fund and the general partner (if the latter is a parent of the PE fund) are likely to be considered liable by prosecutors.

EXAMPLE 2

A French employee of U.S.-based Portfolio Company 2 fraudulently overcharges a UK consumer for an aircraft maintenance contract.

Large Organisation?	Associated Person?	Intention to Benefit?	UK Nexus?
Portfolio Company 2, the PE fund and possibly the general partner could all potentially be liable as "large organisations" for the reasons stated above.	The employee of Portfolio Company 2 is an "associated person" of Portfolio Company 1, the PE fund (as a parent due to grouping) and potentially the general partner.	The intention of the fraud is to benefit Portfolio Company 2, and indirectly the PE fund.	Although the fraudulent representation is made outside the UK by a non-UK national, the fact that the victim is British satisfies the UK nexus requirement.

Each of Portfolio Company 2, the PE fund and the general partner (if the latter is a parent of the PE fund) are likely to be liable.

EXAMPLE 3

A Spain-based employee of Portfolio Company 2 pays customer revenue to himself and fraudulently misstates the accounts of Portfolio Company 2 by recording that the payment was received by Portfolio Company 2.

Large Organisation?	Associated Person?	Intention to Benefit?	UK Nexus?
Portfolio Company 2, the PE fund and possibly the general partner could all potentially be liable as "large organisations" for the reasons stated above.	The employee of Portfolio Company 2 is an "associated person" of Portfolio Company 2, the PE fund (as a parent due to grouping) and potentially the general partner.	The intention of the fraud is to benefit the employee (not Portfolio Company 2, the PE fund or the general partner) and Portfolio Company 2 is the victim. The victim of a fraud cannot ordinarily be liable for its commission.	The employee is based in Spain and Portfolio Company 2, the victim of the fraud, is Spanish. Whilst there may be an argument to say that fraud against Portfolio Company 2 indirectly impacts the English PE fund, the remoteness means that this would be unlikely to succeed.

Due to the lack of a UK nexus and intention to benefit, none of the entities in the group is likely to be liable.

EXAMPLE 4	An Italy-based sales agent of Portfolio Company 3 defrauds UK persons through sales carried out by his own personal business, unrelated to Portfolio Company 3.		
Large Organisation?	**Associated Person?**	**Intention to Benefit?**	**UK Nexus?**
Portfolio Company 3 is not a "large organisation". However, where an associated person of a subsidiary of a "large organisation" (where that subsidiary is not itself a large organisation) commits a fraud that is intended to benefit the subsidiary, the subsidiary can be liable for the offence. In addition, given Portfolio Company 3 is a subsidiary of the PE fund, the PE fund and possibly the general partner could all potentially be liable as "large organisations" for the reasons stated above.	An agent providing services for and on behalf of a "large organisation" is, on the face of it, an associated person. However, given the fraud was carried out through the agent's own unrelated business, the agent is not an associated person as it is not acting in its capacity as an agent for Portfolio Company 3.	The intention of the fraud is to benefit the agent personally through its own personal business (not Portfolio Company 3, the PE fund or the general partner).	Whilst the agent is based in Italy, the fraud was carried out against UK victims.
Due to the agent not being an associated person and there being no intention to benefit, none of the entities in the group are likely to be liable.			

STRICT LIABILITY AND THE BURDEN OF PROOF

One of the most significant aspects of ECCTA is its strict liability regime, meaning that the parent company does not need to have knowledge of the base fraud offence or an intention to benefit from it. Once the prosecution has established beyond reasonable doubt that a base fraud has been committed by an associated person, the burden shifts to the defence to prove, on the balance of probabilities, that the organisation had "reasonable procedures" in place to prevent such fraud.

CONSEQUENCES OF BREACH: CRIMINAL LIABILITY, FINES, REPUTATIONAL DAMAGE AND IMPACT ON FUNDRAISING AND TRANSACTION PROCESSES

The consequences of a breach of ECCTA are severe, meaning that proactive compliance is not only a legal necessity, but also a commercial imperative. They include:

- Criminal sanctions, including uncapped fines (with the exception of Scotland and Ireland, where certain caps apply).
- Reputational consequences, which could have lasting consequences for a PE sponsor's reputation and standing in the market, particularly in an environment where regulators, investors and the public are increasingly focused on corporate governance and ethical conduct.

- Fundraising and transactional consequences, where investors and counterparties will increasingly expect PE sponsors to demonstrate robust compliance with ECCTA, and may seek contractual protections or enhanced due diligence as a condition of investment or transaction.

It is important to note that the offence does not extend to individual liability for those who may have failed to prevent the fraud; the liability is corporate.

DEFENCES: THE IMPORTANCE OF REASONABLE FRAUD PREVENTION PROCEDURES

The principal defence available under ECCTA is the existence of "reasonable fraud prevention procedures".

Organisations cannot rely solely on being audited or being a public company subject to increased regulation to satisfy this defence. Instead, the statutory guidance sets out six principles that should underpin an effective compliance programme and which may, in turn, mean the defence is available: risk assessment, proportionate procedures, top-level commitment, due diligence, communication and training, and monitoring and review.

PRACTICAL STEPS FOR PE SPONSORS

Given the breadth and impact of ECCTA and the way in which it is likely to apply to PE structures, PE sponsors should take steps to prepare for its implementation. In relation to existing portfolio companies which are likely to be considered subsidiaries on the basis that the PE fund exerts a qualifying degree of control (see examples 1-4), the following practical measures are generally advisable:

- **Map the Structure**: Identify all entities within the PE structure that could fall within the definition of a "large organisation", including funds, GPs and portfolio companies.
- **Conduct a Risk Assessment**: Identify and assess the specific fraud risks faced by each entity within the structure.
- **Top-Level Commitment:** Ensure senior management demonstrates clear commitment to preventing fraud.
- **Proportionate Procedures**: Design and implement tailored fraud prevention policies and procedures, ensuring they are proportionate to the risks identified.
- **Due Diligence:** Conduct thorough due diligence on associated persons, including employees, agents and service providers.
- **Train and Communicate**: Roll out training programmes for all relevant persons, and ensure that policies are clearly communicated and understood at all levels of the organisation.
- **Monitor and Review**: Establish a process for regular monitoring and review of compliance procedures, with a formal review at least every two years, or more frequently if circumstances change.

CONCLUSION

ECCTA marks a new era of risk and responsibility for PE sponsors, general partners, funds and portfolio companies. Its broad scope, strict liability regime and severe penalties mean that PE professionals would be well-advised to assess their exposure and implement robust fraud prevention procedures.

By taking a proactive and comprehensive approach to compliance, PE sponsors can not only mitigate the risk of liability, but also enhance their reputation and position themselves for continued success in an increasingly regulated environment.

With these important measures having come into force on 1 September 2025, the time to act is now.

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APPENDIX

Economic Crime and Corporate Transparency Act 2023