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Internal Audit Support

Banking & Building Societies

November/December 2024

BDO

Welcome to your November and December update

BDO's Banking & Building Societies Update summarises the key regulatory developments and emerging business risks relevant for all banks, building societies and, where flagged, for alternative finance providers; such as peer-to-peer lenders, card providers, e-money services providers and debt management companies.

Our FS Advisory Services team are working with more than 100 banks and building societies as internal auditors and advisors, giving us a broad perspective on the issues facing the sector. We have aggregated insights from our in-house research, client base, the Regulators and professional bodies, including the Chartered Institute of Internal Auditors (CIIA), to support your audit plans and activities.

We hope this pack provides value to you and your colleagues; please do share with us any feedback you may have for our future editions.

From 2025, we are excited to share that we will be providing you with a quarterly update pack including key insights for the sector from the previous quarter. Additionally, we will also be sharing monthly spotlights on key issues and regulatory updates relevant to Internal Audit functions via BDO Insights and hosting quarterly webinars. Helping you to keep up with the key issues better than ever before, so please keep an eye out for further updates.

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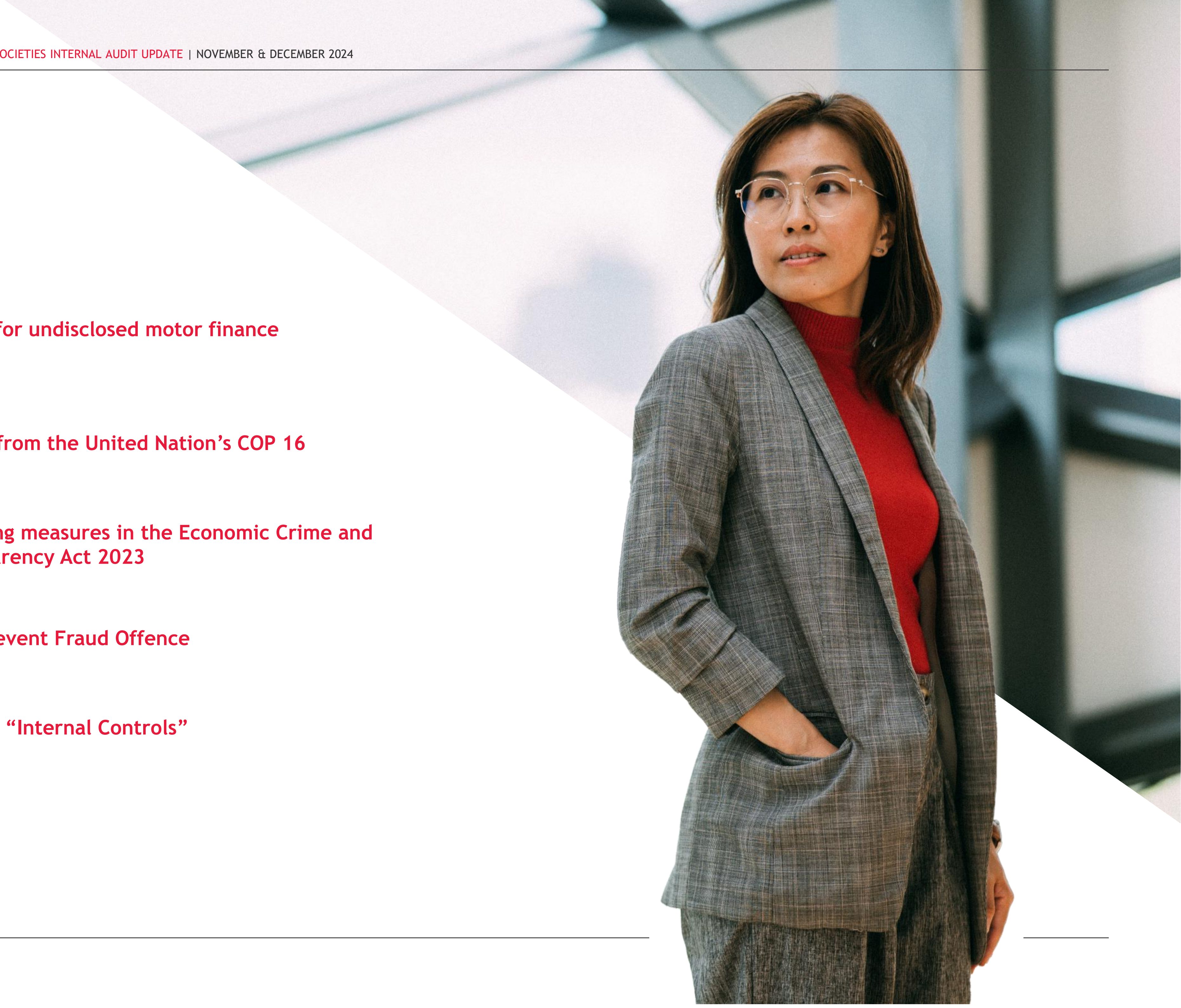

01

Consumer claims for undisclosed motor finance commission

Consumer claims for undisclosed motor finance commission

The recent Court of Appeal (CoA) Judgement on disclosure of commission in three motor finance cases has increased the uncertainty about the breadth and extent of potential consumer claims for undisclosed commission.

Appeals have been lodged at the Supreme Court (ultimate legal body). However, there are other legal actions still ongoing which means there is still room for further uncertainty.
On a forward-looking basis, firms selling motor finance (credit brokers and lenders) are changing processes to clarify commission disclosure.

However, the extent of the back book liability for motor finance firms and banking groups with subsidiaries who have motor financing in their book remains uncertain.

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Background

In January 2024, the Financial Conduct Authority announced a review into past sales of motor finance with discretionary commission arrangements (DCA's) during the period between 5th April 2007 and 28th January 2021. DCAs were banned by FCA from 2021. The complaints are about whether customers knew about the commission and have been over charged.

The FCA's review was triggered by customer complaints to the Financial Ombudsman Service which were found in the customer's favour. The Ombudsman has about 20,000 open complaints. The FCA's review is looking at the evidence and information to determine whether and how any review of past sales should be conducted.

The FCA originally said it would announce if there were to be a remediation exercise or not in September 2024. However, a number of court challenges caused them to announce that would be delayed until May 2025.

In the meantime, customers are able to lodge a complaint with the broker or lender (or both) that sold the motor finance. Martin Lewis (Consumer rights campaigner) estimates there are now around 1 million complaints.

The first of the court actions was a CoA judgement about three consumer loans. This was handed down on **Friday 25 October 2024.**

What are the ramifications for motor finance lenders and brokers?

Legal update (digest of analysis available on legal position)

The CoA judgement on 25 October was unexpected in that it has potentially widened the scope of the issue.

CoA decision on commission disclosure opens door to more consumer claims Linklaters Linklaters Newsletter [newsletter extract below]

"In allowing three appeals (Johnson v FirstRand Bank, Wrench v FirstRand Bank and Hopcraft v Close Brothers Limited) the Court of Appeal has delivered claimant-friendly guidance to lower courts dealing with a substantial volume of borrowers' claims relating to commission disclosures in the context of motor finance lending.

The Court of Appeal's decision is notable in that it goes further than the FCA's current rules on commission disclosure in the credit broking context, which require prominent disclosure of the existence and nature of a commission where it could affect impartiality or have a material impact on the customer's decision to transact, and disclosure of the amount of commission only on a customer's request."

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Consumer claims for undisclosed motor finance commission

This is an important legal development with immediate market-wide impacts and potential longer-term implications in various financial services contexts.

The decision may have implications for credit broking outside the motor finance context, potentially affecting other intermediated credit products where a commission is paid to the broker and the customer is not told the exact amount of the commission and explicitly consents to it being paid.

The Court of Appeal found that where car dealers also act as credit brokers to arrange finance for their customers they will owe those customers both a disinterested duty and a fiduciary duty in the credit broker role. The decision confirmed that a lender would be liable as principal where secret commission was paid to the broker in breach of the disinterested duty the broker owed to the borrower; and liable as an accessory to breach of the fiduciary duty owed by the broker to the borrower where partial disclosure was made. The then market standard practice of including a statement that commission may be payable within the loan documentation was not necessarily sufficient to negate secrecy; relevant would be the steps taken to draw that to the borrower's attention.

The Court of Appeal's conclusion on what should be disclosed and how goes beyond the FCA's current rules on commission disclosure.

Both lenders have publicly stated their disagreement with the decision and their intention to seek permission to appeal to the Supreme Court. They may find some comfort in the Court of Appeal's concluding paragraph, which notes that it may be desirable for the tensions between currently binding authorities to be resolved by the Supreme Court."

It should be noted that there is further court action still to be determined. Separately, Barclays has submitted an application for a Judicial Review (JR) of the Financial Ombudsman's decisions.

A Judicial Review is a legal process where a judge reviews the lawfulness of a decision or action made by a public body, in this case, the Financial Ombudsman service. This court process is separate from the Supreme Court process and could take some time.

Given the amounts of money potentially involved, it is likely there will be further court applications to review any decisions made by public bodies.

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Consumer claims for undisclosed motor finance commission

Regulatory position update

The FCA's statement on the CoA judgement requested a swift decision by the Supreme Court, thus hoping the CoA judgements are overturned.

Without it, regulators are left with a sizeable issue to address and it's not clear how that can be mitigated for the past. The FCA, PRA, BoE and HMT will want to avoid a disorderly market or sizeable market failure. We know the FCA is reaching out to firms to assess the potential impact of the judgement.

The current options that seem to be open are;
On a forward-looking basis, changing the way commission is disclosed to address the CoA judgement. This means actual and clear disclosure of amounts of commission paid. This requires new rules and guidance from the FCA. However, firms can implement this now by changing sales processes to disclose commissions to consumers.

On a backward-looking basis, if the court judgement stands and is upheld by the Supreme Court, the industry is looking at an extensive redress and remediation exercise. The amount of redress is unclear, however current cases before the courts and Financial Ombudsman give an indication of what this would be. At its simplest, it is repayment of the commission to the customer plus 8% interest over the time since the commission payment was made.

The current DCA motor finance issue has a time period from April 2007 to January 2021. This is because the Financial Ombudsman jurisdiction over credit commenced in 5th April 2007. Therefore, it is reasonable to assume the wider implications of the CoA judgement would equally span from the date of the Financial Ombudsman's jurisdiction, i.e. 2007.

At the moment, there is a question whether this judgement will apply to a much wider range of commission and credit scenarios and products. There is considerable uncertainty about that.

What should firms be thinking about?

Regulatory requirements

Complaints handling: All consumer complaints should be logged and acknowledged. Investigating complaints and making decisions on parts that are not related to the DCA sale could be progressed.

Impact analysis

Understanding the potential impact of a consumer redress exercise such as sizing the potential. population.

Planning

Assessing the quality, completeness and location of customer records and agreements in place over the period. Create accessible records and identifying gaps.

Capacity and operational planning

Work through how to process complaints or options to manage a redress exercise, including capacity planning.

Financial resources

Regulated firms (those authorised by the FCA or PRA) are required to hold adequate financial resources, including the ability to cover redress liabilities. This requires an assessment of the potential financial impact.

Listed firms have market disclosure obligations they need to be mindful of.

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Consumer claims for undisclosed motor finance commission

What does this mean for Internal Audit

In our July and August edition, we discussed how Internal Audit functions within regulated lenders may be asked to provide assurance over finance remediation projects, including assurance of the risks and controls identified and how these are managed against regulatory expectations. The recent developments in motor finance commission disclosure mean a more proactive and detailed approach is required.

If the court judgement stands and is upheld by the Supreme Court, firms will be looking to Internal Audit to support and provide assurance over their redress and remediation exercise, including any provisions which need to be put in place. Going forward, in addition to the assurance required over remediation projects, Internal Audit may be required to assess complaints handling relating to motor finance commissions against the latest legal and regulatory requirements.

If you require support or would like to discuss with any of these topics, please contact:

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02

Three takeaways from the United Nation’s COP 16

Three takeaways from the United Nation's COP 16

BDO was delighted to attend the UN COP 16 Biodiversity Conference in Cali, Colombia, in person. This was a landmark event, drawing 23,500 delegates and marking the largest Convention on Biological Diversity (CBD) COP ever. The atmosphere was charged with enthusiasm and cautious optimism about achieving nature-positive outcomes and financial sector leadership, despite uncertainties about the timeline for change.

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COP 16 overview

The biennial meeting of the 1993 UN Conference on Biological Diversity (CBD), also known as COP 16, took place from October 21 to November 1, 2024, two years after the historic adoption of the 2022 Kunming-Montreal Global Biodiversity Framework (GBF) at COP 15. Promoted as the "Paris Agreement for Nature", it seeks to contribute to the achievement of the Sustainable Development Goals (SDGs) and aims to halt and reverse biodiversity loss by 2030 with ambitious targets including:

- Protecting at least 30% of the world's land and marine areas by 2030
- Restoring at least 20% of degraded ecosystems
- Reducing pollution from plastics and excess nutrients
- Ensuring sustainable use of biodiversity.

The GBF also emphasises equitable benefit-sharing from genetic resources and the need for increased financial support for biodiversity conservation.

Key takeaways for the financial services' sector

1. **Achieving net zero targets is unrealistic without addressing nature and biodiversity**

   As the Glasgow Financial Alliance for Net Zero (GFANZ) put it in their consultation on Nature Net Zero Transition Plans published on 29 October 2024; "There is not net zero without nature".

   Financial institutions and other organisations will need to manage risks arising from climate, biodiversity and nature together, because they are interlinked. Restoring and protecting land, ocean and freshwater sources, and creating or increasing greenhouse gas (GHG) carbon emissions sinks, will reduce emissions, accelerating zero targets.

   This will create the need for businesses to incorporate nature and biodiversity into existing climate strategies, transition plans, risk assessments and ultimately their sustainability reporting.

2. **Loss of natural capital becomes an area of focus for regulators, which can accelerate progress for financial institutions**

   Given the interaction between nature, climate and the economy is exceptionally complex, the role of central banks in progressing this agenda is essential and welcomed by businesses. Central Banks present at COP 16 agreed that they have a key role in helping the sector manage the macroeconomic and financial risks arising from nature degradation through the establishment of policies and actions, and by providing nature-related scenarios.

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Three takeaways from the United Nation's COP 16

The De Nederlandsche Bank (DNB) framework for assessing how damages to ecosystem services can impact banks' resilience through increasing credit risk, using the ENCORE framework for evaluating the impact of environmental risks on resilience was an insightful example of how banks, supervisors and policymakers can begin addressing nature degradation within their risk assessments.

The Cali-Baku Pledge, published on 25 October 2024 by the Network for Greening the Financial System (NGFS), a coalition of 141 central banks and financial supervisors and 21 global observers, reaffirmed their commitment to consider the economic impacts and financial risks arising from climate change and nature degradation. Highlighting an integrated approach to fulfil monetary policy and financial stability mandates, the NGFS confirmed that it will provide central banks with analytical frameworks, tools and guidance in the near future.

3. **The financial services' sector must assess and manage nature and biodiversity-related risks - using the Taskforce for Nature Financial Disclosures (TNFD) framework will help**

Like climate change, nature and biodiversity are key drivers of risk that impact traditional financial institutions risk categories such as credit, operations, investments, market and reputation. Some practical examples already exist from first-time TNFD adopters.

Taking credit as an example, Hirotaka Hideshima, a member of the TNFD taskforce, explained that nature and biodiversity risk management can start with grouping borrowers by creditworthiness, estimating the probability of default for each group and calculating expected and unexpected losses. Risk assessment will ultimately reveal opportunities for actions to converse and restore nature, reducing long-term risks. Organisations will only be able to demonstrate genuine contribution to the transition through identifying nature positive opportunities for sustainable finance.

This will inevitably lead to increased demand for nature and biodiversity financial-related disclosures, which will be incorporated into existing climate reports, to inform investment decision-making.

Our reflections

Colombia excelled in creating an open and inclusive environment. COP 16 was, originally labelled, the 'people's COP'. Under the slogan 'Peace with Nature', it brought together a wide range of stakeholders - indigenous people, local communities, and stakeholders in restoration and conservation efforts.

A significant development was the establishment of the "Cali Fund" - a voluntary global fund for benefit-sharing from the commercial use of genetic data though Digital Sequence Information (DSI). This initiative encourages companies to contribute a portion of their profits, representing a major step toward benefit-sharing in biodiversity conservation. Through DSI, companies can record genetic information that has been gathered from the natural environment and it can be made available for use in research which will help to identify, for example, infectious diseases, predicting which plants will survive in a warming climate, or help protect threatened species.

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[1] ENCORE is a collaboration between Global Canopy, the UNEP Finance Initiative and the UN Environment Programme World Conservation Monitoring Centre (UNEP-WCMC). It launched in 2018 to help financial institutions and companies understand how their activities impact nature.

Three takeaways from the United Nation's COP 16

Despite the positives, finance for nature and biodiversity will be delayed as a result of 66% of the parties to the CDB, including the UK, missing the deadline to submit National Biodiversity Strategies and Action Plans (NBSAP)

Article 6 of the Convention on General Measures for Conservation and Sustainable Use, requires that each Contracting Party develops an NBSAP and updated plans. In 2024, the Parties had to submit updated plans to achieving the goals of the 2022 BDF ahead of COP 16. Unfortunately, most Parties missed the deadline. By the end of COP 16, only 44 Parties, out of 196 had submitted NBSAPs, with 119 (including the UK) only adopting related national targets.

In addition, the lack of agreement on a new global biodiversity fund for nature disappointed many. This is because the conference had to be paused after midnight on the 1 November without the expected agreement on a new global fund for nature under the existing Bezos Earth Fund (BEF). Some parties felt the BEF was not versatile enough to meet developing countries' needs, leading to calls for the creation of a new fund with a different setup. However, conversations will continue in inter-sessional meetings to find a solution over the coming months.

The financial sector's role in biodiversity

It is evident that despite ongoing efforts, biodiversity is deteriorating worldwide at rates unprecedented in human history and the financial sector has an important role to play in financing the transition.

As the UN Secretary-General Antonio Guterres highlighted in his speech at the conference, "Biodiversity is the defining task of the century." Since the adoption of the SDGs in 2015 and the UN COP 15, attention to nature and biodiversity has gained momentum, but the topic remains far from mainstream. The Nature Action 100 benchmark report released at COP 16 revealed that while many companies aspire to be nature-positive, very few have made any concrete commitments.

This is set to change. Financial institutions, including insurers, asset managers, and banks, showed unprecedented engagement, signalling a growing interest in investing in nature-based solutions and a desire for supportive policies and regulations.

The sustainability agenda is rapidly progressing, and it will continue to do so, with an increased focus on social impacts, and disclosures – given the level of attention more investors will want to see publicly disclosed information on nature-related financial risks and impacts.

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What does this mean for Internal Audit

The amount of time Internal Audit teams will spend on biodiversity risk will be dependent on the size and nature and complexity of their businesses. Firms may address such risks through either

- a stand-alone climate, nature and biodiversity internal audit; or
- review climate risks and strategies thematically as part of their broader review into risk management frameworks, risk assessments and risk culture reviews.

Whichever approach is taken, it is important that Internal audit teams must ensure that nature and biodiversity risks are integrated into the organisation's risk management framework. This includes reviewing climate strategies and transition plans to verify they incorporate nature and biodiversity considerations and evaluating the accuracy and completeness of sustainability reporting. Auditors should also ensure compliance with evolving regulatory requirements related to natural capital and biodiversity and assess the effectiveness of frameworks like ENCORE and TNFD in managing these risks.

03

Information sharing measures in the Economic Crime and Corporate Transparency Act 2023

Information sharing measures in the Economic Crime and Corporate Transparency Act 2023

The UK government released guidance in October 2024 on the information sharing measures introduced by the ECCTA. These measures are designed to enhance the ability of firms in the Anti-Money Laundering ("AML") regulated sector to share information in order to prevent, detect, and investigate economic crimes such as fraud and money laundering, without involvement from law enforcement or a request from the recipient firm.

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Key provisions of the guidance:

1. **Direct and Indirect Information Sharing:**

   Direct sharing (Section 188 of the ECCTA 2023) allows one firm to share customer information with another firm in the AML-regulated sector if certain conditions are met. This can occur either voluntarily (under a "warning condition") or in response to a request from another firm (under a "request condition"). For example, a firm may share information if it has taken, or would have taken, action such as terminating a business relationship due to economic crime concerns.

   Indirect sharing (Section 189 of the ECCTA 2023) allows information to be shared through a third-party intermediary, typically used when the sharing firm cannot identify a specific recipient but still wishes to warn others about an economically risky customer.

2. **Conditions for Sharing:**

   The **request condition** applies when a firm requests information from another firm, which they believe will help them decide on the appropriate level of due diligence or whether to terminate a customer relationship.

   The **warning condition** allows a firm to proactively share information if it has taken safeguarding action against a customer due to economic crime concerns. This ensures that firms are not unfairly excluding customers from services without a valid reason, and any disclosure must be well-documented to comply with governance standards.

3. **Protections for Firms:**

   Firms sharing information under these conditions are protected from civil claims (e.g., breach of confidentiality) if they act in line with ECCTA's provisions. However, protections only apply if the sharing is done for legitimate purposes tied to economic crime prevention.

4. **Wider Compliance Requirements:**

   These new measures are voluntary and do not replace firms' existing obligations to report knowledge or suspicion of money laundering and/or terrorist financing to the National Crime Agency ("NCA") through Suspicious Activity Reports ("SARs") under the Proceeds of Crime Act ("POCA") 2002.

continued >

Information sharing measures in the Economic Crime and Corporate Transparency Act 2023

Where regulated firms choose to share customer information after submitting a SAR, they will need to make sure that they do not indicate this to the receiving organisation. However, firms are advised to share information on submitting SARs when they are undertaking a joint disclosure report, often referred to as a 'Super SAR', as set out in section 339ZB of POCA and section 21CA of the Terrorism Act 2000.

Firms must comply with UK General Data Protection Regulation ("GDPR") requirements, ensuring that shared information is accurate, properly stored, and used only for the specified purposes. Additionally, firms should keep records of all shared information and decisions, ensuring an audit trail for potential regulatory review. Firms will also benefit from undertaking regular assurance reviews and risk assessments before and after sharing mechanisms have gone live.

5. Encouraged Use of Technology:

> While there are no specific technological requirements, the government encourages firms to use advanced tools like application programming interfaces ("APIs") for efficient information sharing. Pilot exercises are also recommended to assess the risks and benefits of new technologies before broad adoption.

These measures reflect a significant step toward increasing transparency and cooperation between financial institutions and related sectors in combating economic crime. The guidance aims to ensure that information sharing is carried out responsibly while protecting firms from liability and upholding consumer rights. This approach will be crucial for Banks & Building Societies which are on the front lines of identifying and preventing financial crime.

continued >

Information sharing measures in the Economic Crime and Corporate Transparency Act 2023

What does this mean for Internal Audit

Banks & Building Societies will need to consider how the new measures (where they are intended to be used) can be incorporated into their existing processes, systems and controls to develop a consistent and robust approach to information sharing. They will need to ensure their frameworks are appropriately enhanced/updated to not only account for the new measures but to do so in a way which ensures that wider compliance requirements (such as those under POCA and the UK GDPR) continue to be met.

When conducting reviews, internal audit should focus on the robustness of information-sharing mechanisms introduced by the ECCTA. This includes assessing the processes for direct and indirect information sharing, ensuring that conditions for sharing are met, and that all actions are well-documented. Additionally, auditors should review the firm's adherence to wider compliance requirements, such as GDPR and POCA, ensuring that shared information is accurate, properly stored, and used only for specified purposes. This may involve more frequent audits and deeper dives into specific areas such as data protection and compliance with SARs reporting. Internal audit plans will also need to incorporate regular assurance reviews and risk assessments before and after the implementation of information-sharing mechanisms.

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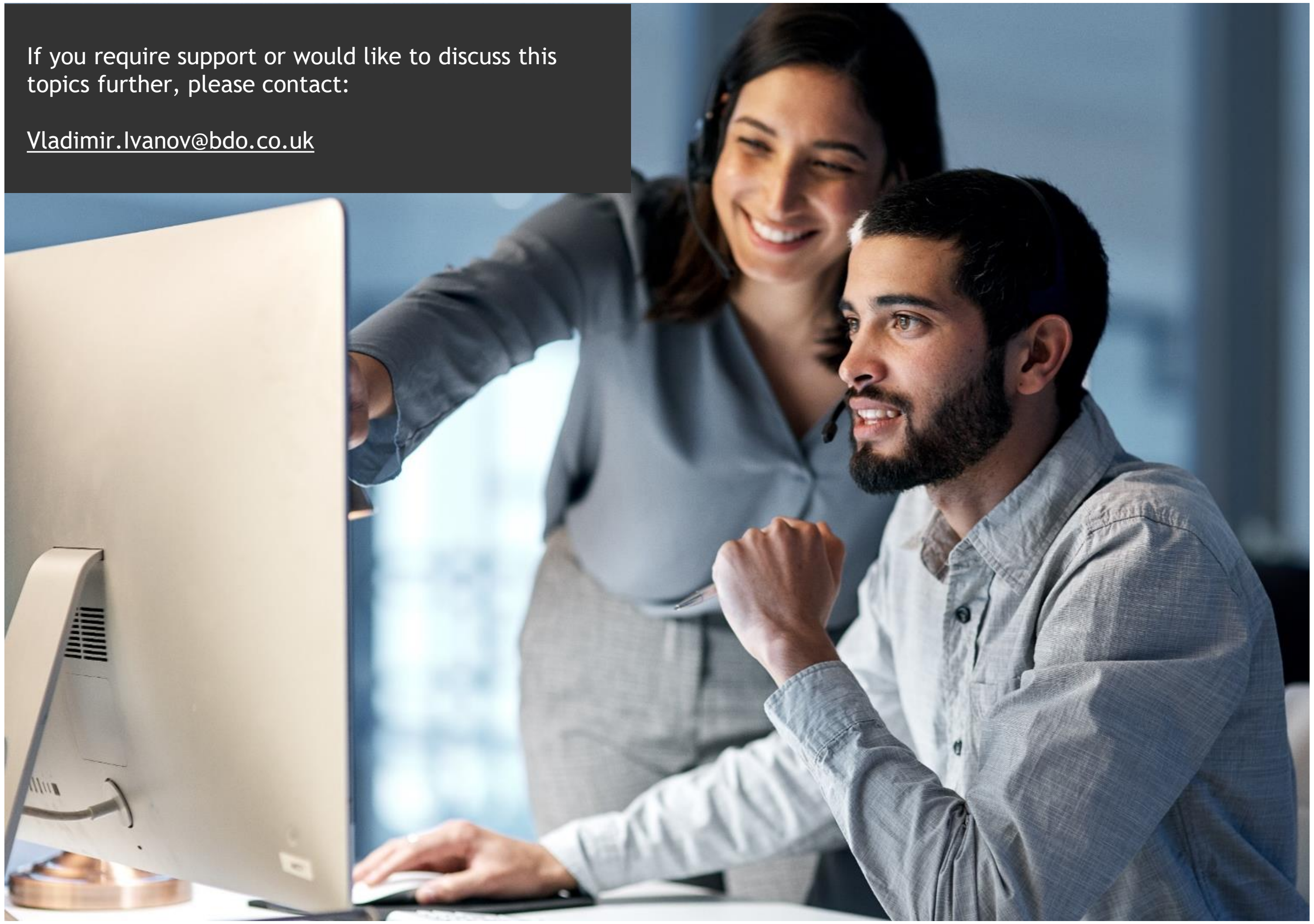

04

New Failure to Prevent Fraud Offence

New Failure to Prevent Fraud Offence

Following guidance published by the Home Officer on 6 November 2024 the new offence will take full effect from 1 September 2025. This gives organisations 9 months to develop and implement fraud prevention procedures. The guidance focuses on the procedures that organisations can put in place to prevent their employees and persons associated with them from committing fraud offences.

The new failure to prevent fraud offence in the UK applies to large organisations that meet two or more of the following criteria; in the financial year before the fraud: more than 250 employees, more than £36 million turnover, and more than £18 million in total assets.

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Background to the Economic Crime and Corporate Transparency Act

The Economic Crime and Corporate Transparency Act (“ECCTA”) introduces a significant shift in corporate liability related to fraud prevention. This new legislation, which received royal assent in October 2023 introduces a new corporate offence of failure to prevent fraud. The offence makes organisations in scope, potentially liable where specified/base fraud offences are committed by employees and associated persons intending to benefit either the organisation or any person to whom the organisation provides services, and the organisation does not have reasonable prevention procedures in place. It does not need to be demonstrated that directors or senior managers ordered or knew about the fraud.

This offence aims to combat fraud by encouraging organisations to foster an anti-fraud culture akin to the transformation that the UK Bribery Act 2010 achieved in corporate compliance for bribery prevention.

Why is this important?

The cost of fraud to UK companies is significant and BDO’s Fraud Track Report 2024 highlights that this is likely to increase with new fraud growth areas such as greenwashing, bluewashing and the increasing use of AI. The UK Fraud Strategy 2023 reported that Fraud represents 41% of all crime committed in the UK and with the Association of Chartered Fraud Examiners Report to the Nations 2024 estimating that the average organisation loses 5% of its annual revenue to fraud each year, fraud is very much on the board agenda.

To find out more on the latest Fraud trends, download our FraudTrack Report where you can see the variety of reported fraud cases and trends across industries and geographies. We also look at fraudsters’ career types, motivations, physical location, and their social environments and backgrounds.

Why will it be easier to prosecute organisations?

The ECCTA has significantly altered the landscape for corporate criminal liability in relation to fraud. In addition to introducing the new failure to prevent fraud offence it also revises the traditional identification doctrine making it easier for authorities including the SFO to prosecute organisations by holding them accountable for the commission of fraud offences linked to Senior Managers rather than the organisation’s “directing mind and will”.

Prior to ECCTA, establishing corporate criminal liability required proving a direct link between the offence and the "directing mind and will" of the organisation, typically involving top executives or board members. Under the ECCTA, however, the Senior Manager Test now applies. This test broadens the range of individuals whose actions can lead to corporate liability by focusing on senior managers—those involved in management decisions who act within their authority's scope. According to the new standard:

“If a senior manager of a body corporate or partnership acting within the actual or apparent scope of their authority commits a relevant offence after this section comes into force, the organisation is also guilty of the offence.”

continued >

New Failure to Prevent Fraud Offence

What penalties could be applied?

Section 199(12) of ECCTA sets out potential sanctions. Certain offences could lead to prosecution, resulting in financial penalties of potentially unlimited fines in addition to reputational damage. Whilst the new failure to prevent offence is a corporate offence, prosecuting authorities may also bring prosecutions against individuals for the base fraud offences committed.

Where an organisation either co-operates fully with an investigation or makes a full disclosure by self-reporting an incident of fraud to the prosecuting authorities this may be considered in any decision to commence criminal proceedings and if so which type of proceedings, for example a prosecution or a deferred prosecution agreement.

Defence of Reasonable fraud prevention procedures?

The Guidance published by the Home Office on 6 November sets out the key considerations for organisations in the development of their fraud prevention procedures. It defines six principles which should inform organisations in the development of their fraud prevention framework. These principles are well known to Ethics and Compliance teams as they mirror (at the high level) those principles set out under previous corporate criminal failure to prevent offences, namely bribery and the facilitation of tax evasion.

Those principles are:

- Top level commitment
- Risk assessment
- Proportionate risk-based prevention procedures
- Due diligence
- Communication (including training)
- Monitoring and review.

If a matter proceeds to court the onus is on the organisation to prove that the procedures it had in place were reasonable to prevent the fraud as the time that the fraud was committed. A risk assessment should be kept under review. The frequency of review is a matter for the relevant organisation. However, if the risk assessment has not been reviewed recently enough, a court may determine that it was not fit for purpose and therefore that ‘reasonable procedures’ were not in place at the time of the fraud.

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New Failure to Prevent Fraud Offence

What does this mean for internal audit?

Internal audit teams should use this guidance to help strengthen their organisation's fraud prevention measures. Given the similarities between guidance on fraud, bribery, and tax evasion, organisations should already have a foundation to build upon.

Internal audit teams should ensure firms have a detailed and robust Fraud Risk Assessment that covers both inward and outward fraud. This assessment is crucial for identifying potential vulnerabilities and areas that require attention. Additionally, it is important that the business has identified and defined associated persons under the scope of failure to prevent offences. This will help in understanding who might be involved in fraudulent activities and how to mitigate these risks. An assessment should be undertaken to evaluate the effectiveness of their controls in place to prevent and detect fraud for all the risks identified.

The organisational culture should support fraud prevention. Internal audit teams should assess the quality of fraud awareness training provided to staff and ensure it is effective in reducing fraud risk, review the organisation's fraud policy and check when it was last updated. It is important to ensure that the policy aligns with current legislation and best practices. Additionally, the effectiveness of whistleblowing arrangements should be assessed. Staff should be aware of what to look for and how to respond to suspicions of fraud, this should also form part of staff training activities.

When responding to fraud allegations, internal audit teams should conduct root cause analysis and support the business to implement measures to mitigate issues. This approach helps in understanding the underlying reasons for fraud and preventing future occurrences.

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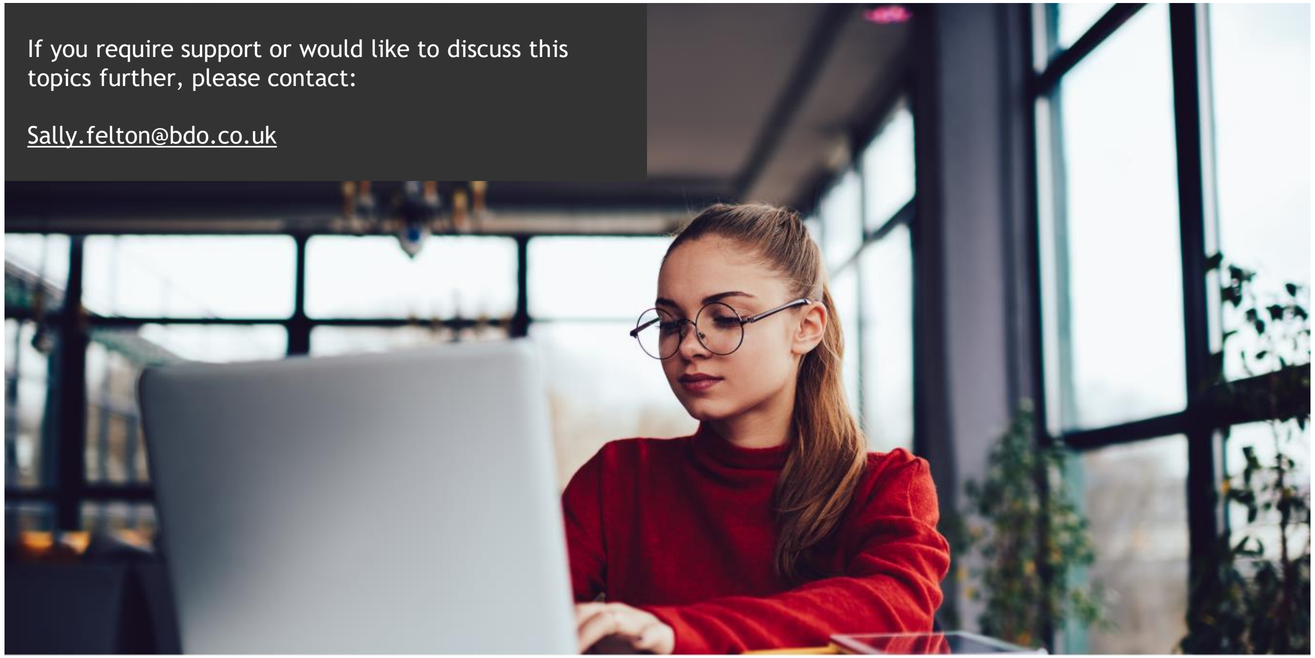

05

HMRC’s VAT document for “Internal Controls”

HMRC's VAT document for "Internal Controls"

For many years, HMRC has been focused on improving how tax administration operates in the UK and this has been seen in the established "co-operative compliance" approach that has been in place for some time.

Off the back of a review into tax administration in the Spring Budget 2021, the government announced it would take action in three ways: mitigate uncertainty through new guidelines for compliance, make changes to help with long running enquires and improve the co-operative compliance experience. Recently there has been additional developments which are set to drive change on how businesses consider their processes and controls for all taxes.

This new VAT document for "Internal Controls" will be applicable for all firms.

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Recent developments in 2024

In terms of item 1 above, a series of documents have been issued following this (commencing in late 2023 but continuing throughout 2024), focusing on a number of areas including capital allowances, transfer pricing, employment taxes and VAT, but it is the most recent document on VAT (issued on 24 September 2024) that will really start to drive change in the way that businesses need to consider their processes and controls for all taxes.

Historically it has been the very largest and most complex businesses that have developed a standardised approach to process and control documentation for tax and the remaining businesses have often wrapped tax into their underlying finance operations and most often managed the overview of controls on a less formal basis than HMRC would like.

The new VAT document however talks specifically about control design and documentation for "internal controls" as well as the need to assess the effectiveness of those controls. Specifically, it states that businesses should:

- document all the VAT risks identified, including their frequency, likelihood and impact
- document the nature, type and frequency of control activities covering the risks
- document how the control activity is performed
- record who is responsible for the control activity, and who has overall sign-off
- document how testing the effectiveness of the control has been planned and performed
- document how the control will be monitored for continued relevance
- ensure a process is in place for reporting deficiencies to the appropriate level of management and undertaking remedial action.

It is BDO's view that this is a natural progression from what we have had before (and is already in place in some of the UK's more sophisticated businesses) in terms of the requirements of the Senior Accounting Officer legislation, the deployment of published tax strategies, and the "low-risk" indicators that are considered by CCMs for the business risk review process.

In the very near future HMRC will be expecting more and more businesses to have a single and standardised approach to managing tax risk across their business, and this sets a framework from which this will be managed.

continued >

VAT Document for "Internal Controls"

What does this mean for Internal Audit?

The new HMRC guidelines require Internal Audit teams to ensure that their business has adopted a more structured and detailed approach to managing tax risks. This means ensuring that the business is documenting all VAT risks, detailing control activities, specifying responsibilities, testing the effectiveness of controls, and ensuring ongoing monitoring. Responsibilities for each control activity must be specified, and regular tests should be planned and performed to assess control effectiveness. This will help businesses to show HMRC that they are formalising the monitoring their control environment around VAT.

If you require support or would like to discuss this topics further, please contact:

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