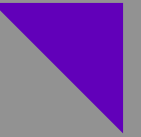


Fraud Enforcement Around the Globe: Legal and Strategic Updates



Lefosse

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ROPES & GRAY

Fraud Enforcement Around the Globe: Legal and Strategic Updates

Agenda

- **Introduction**
- **Legal Updates**
- **Strategic Approaches**
- **Q&A Session**
- **Conclusion**

UK – Failure to Prevent Fraud

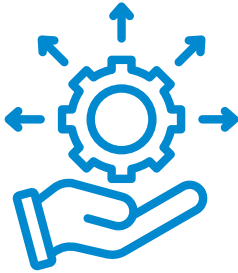
The UK's Economic Crime and Corporate Transparency Act 2023 (ECCTA) created a **new corporate offence of 'failure to prevent fraud'**, which began on **1 Sept 2025**.

Offence

UK and non-UK 'Large' organisations (i.e. corporate entities/partnerships meeting key criteria) may be liable for failing to prevent an **"associated person" ("AP")** (i.e. an employee, agent, subsidiary, or any party performing services for it/on its behalf) **committing a range of specified fraud offences** with the **intention of benefitting** directly/indirectly: (a) the **organisation**; or (b) any person/party to whom the AP provides services for or on behalf of the organisation (e.g. **customers/clients**).

- ➔ The **subsidiary** of a qualifying "large organisation" may also be liable for the offence if an employee of the subsidiary commits a fraud offence intending to benefit that subsidiary, even if the subsidiary itself does not meet the criteria to be a "large organisation."

UK – Failure to Prevent Fraud (contd.)



Territorial scope: is wide and hinges on the underlying fraud offence. The offence bites where an AP commits a base fraud offence with a UK nexus (i.e. a part of the fraud act(s) occurred in the UK, or the actual/intended gain or loss occurred in the UK).

- Thus, a fraud offence committed outside the UK by a non-UK AP intending to benefit a non-UK entity could be an offence by the latter if there were UK victims.

Defence:

Organisations have a defence if they can show that they **had ‘reasonable’ fraud prevention procedures in place** at the time when the fraud occurred. ‘Reasonable’ fraud prevention procedures should be informed by the six outcomes-focused principles outlined in the government’s Guidance.

UK – Failure to Prevent Fraud (contd.)

What types of fraud are captured?

- The 'base fraud' offences for the purposes of the FTPF offence capture a wide range of fraudulent conduct:

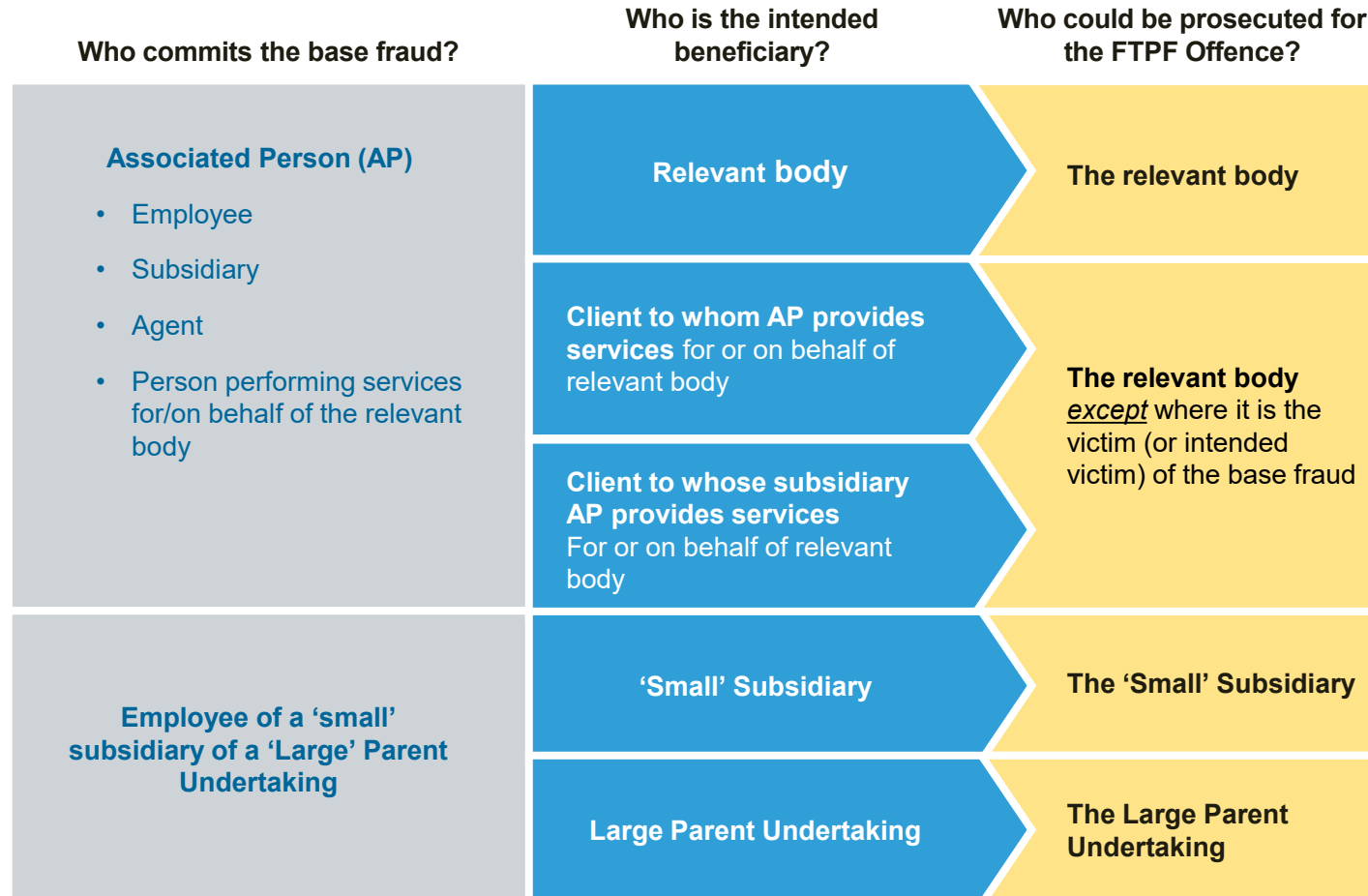
- ▶ fraud by false representation (including by omission)
- ▶ fraud by failing to disclose information when under a legal duty to do so
- ▶ fraud by abuse of position
- ▶ obtaining services dishonestly
- ▶ participation in a fraudulent business
- ▶ false statements by company directors
- ▶ false accounting
- ▶ fraudulent trading
- ▶ cheating the public revenue (i.e. UK tax-related fraud)
- ▶ Inchoate offences (aiding, abetting, counselling, or procuring) in relation to any of the above



Points to note

- Base frauds are committed as soon as the perpetrator **acts with the requisite dishonest intention** – it is immaterial whether anyone was actually deceived, harmed, or benefitted as a result of the perpetrator's acts.
- The offence of **cheating the public revenue** will likely create an overlap with the 'failure to prevent tax evasion offence' (FTPE).

UK – Failure to Prevent Fraud Offence in Operation



DOJ White-Collar Enforcement Plan

On May 12, 2025, the DOJ Criminal Division announced its White-Collar Enforcement Plan (“the Plan”) to prioritize three core values in corporate and white-collar prosecutions.

- **Focus on “high-impact areas”**: waste, fraud, and abuse, including health care fraud, violations of the False Claims Act, Federal Food, Drug and Cosmetic Act and Controlled Substances Act, foreign bribery that impacts “U.S. national interests”, and trade and customs fraud.
 - Notably, the Plan doubles down on the Trump administration’s priority to investigate and prosecute health care fraud.
 - Health care-focused issues **account for around 1/3 of DOJ’s 10 delineated priority areas** that aim to call out any “fraud that threatens the health and safety of consumers,” seen as encompassing **FCA, Controlled Substances Act, and FDCA enforcement**.
 - Greater focus on interactions involving federal healthcare programs and healthcare professionals, patient support programs, and drug and device distribution and manufacturing is expected.
- **Fairness** in corporate criminal investigations by prioritizing individual accountability, including senior misconduct.
- **Efficiency** in investigating cases and making charging decisions for expeditious criminal resolutions.

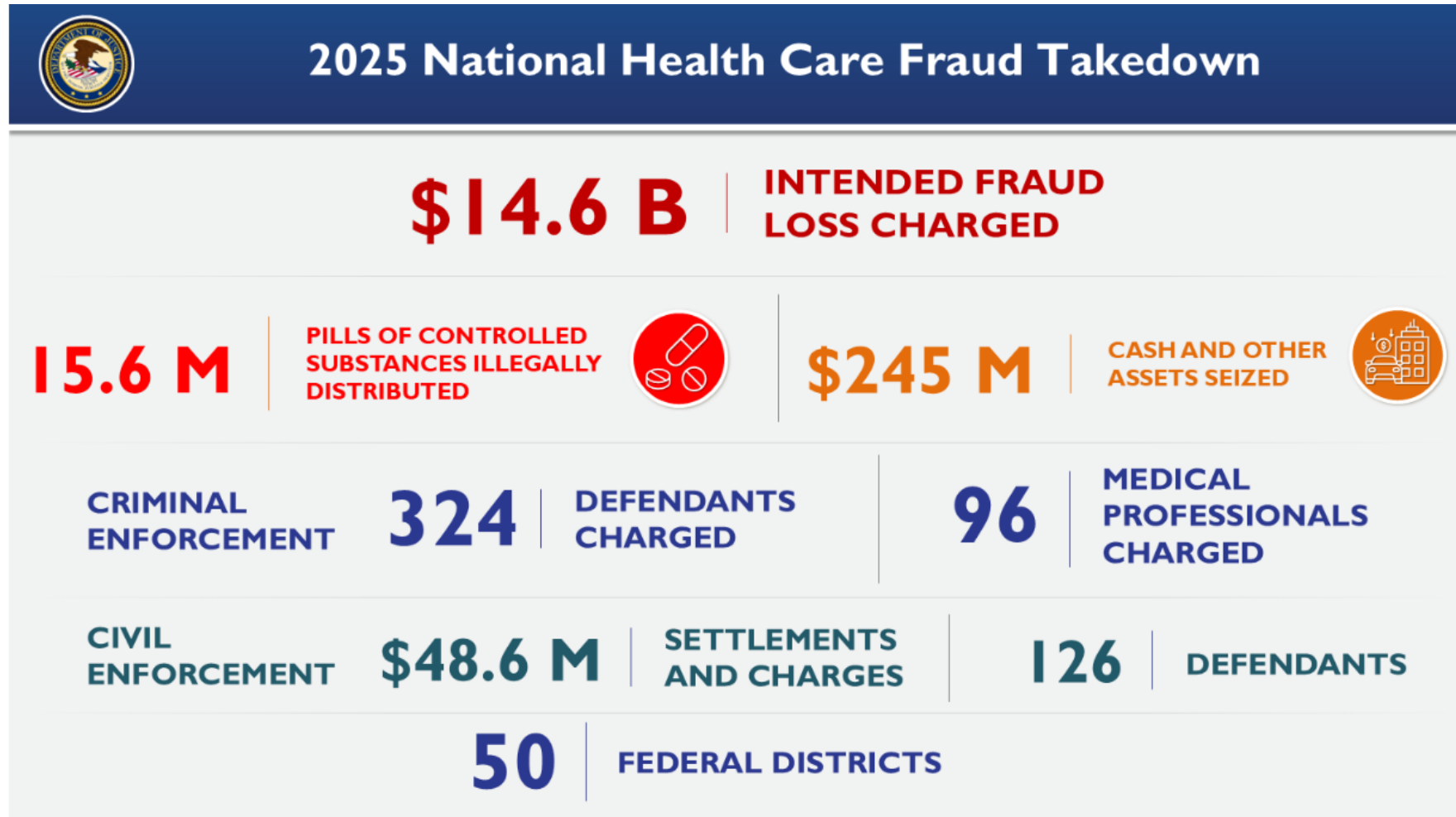
Health Care Fraud in Focus

Health care fraud remains a priority for DOJ.



- Health care violations dominate the enforcement list for Criminal and Civil DOJ via the False Claims Act..
- DOJ Whistleblower Program includes violations involving public health care benefit programs.
- White Collar Enforcement Plan highlighted fraud, including health care fraud.
- On July 2, 2025, DOJ and the U.S. Department of Health and Human Services Office of Inspector General (“HHS-OIG”) announced a first-of-its-kind working group for False Claims Act violations with a goal of strengthening collaboration between DOJ and HHS to advance priority enforcement areas including kickbacks related to medical devices and materially defective devices impacting patient safety, among others.

Recent Health Care Fraud Enforcement Efforts



SEC Cross-Border Task Force to Combat Fraud

On September 5, 2025, the SEC announced the formation of a cross-border task force to strengthen and enhance the SEC Division of Enforcement's efforts to identify and combat cross-border fraud harming U.S. investors.

- **Initially the Task Force will Focus on** “investigating potential U.S. federal securities law violations related to foreign-based companies, including potential market manipulation, such as “pump-and-dump” and “ramp-and-damp” schemes.
 - This initiative reflects the SEC’s heightened scrutiny of international securities violations and its commitment to protecting U.S. investors from global threats.
- **In Addition**, the Task Force will examine potential securities law violations related to companies from foreign jurisdictions where governmental control and other factors pose unique investor risks.
- The SEC Chairman Paul S. Atkins also **directed staff** in other SEC divisions and offices, including the Divisions of Corporation Finance, Examinations, Economic and Risk Analysis, and Trading and Markets as well as the Office of International Affairs, to consider and recommend other actions that would better protect U.S. investors.

New U.S. Trade Fraud Task Force



- On August 29, 2025, the DOJ and U.S. Department of Homeland Security (“DHS”) announced the formation of the cross-agency Trade Fraud Task Force to target importers and affiliates who defraud the United States government by evading tariffs, duties, and import restrictions.
- The DOJ press release announcing the Trade Fraud Task Force notes that the task force will bring enforcement actions under a number of statutes, including the Tariff Act of 1930, the False Claims Act, and parallel criminal prosecutions, penalties, and seizures under Title 18’s trade fraud and conspiracy provisions.
- The DOJ has been vocal about encouraging whistleblowers and their counsel to file qui tam actions against companies that engage in evasion of tariffs or other customs duties.
- We anticipate increased scrutiny of customs declarations and increased enforcement.

Customs Fraud Enforcement



Global Office Furniture: DOJ filed a complaint alleging that GOF and its owner underpaid customs duties owed on imported office chairs.



Grosfillex: \$4.9m settlement to resolve allegations it evaded antidumping and countervailing duties on items originating from China.



Evolutions Flooring: \$8.1 settlement for improperly evading duties on imports of multilayered wood flooring from China.



Global Plastics & Marco Polo: \$6.8m settlement (after voluntary self-disclosure) for failure to pay customs duties on plastic resin imported from China.

DOJ 2025 White-Collar & FCPA Enforcement Priorities: Focus on Cartels, TCOs, and National Security

June 9, 2025: DOJ issues new FCPA Guidelines, ending the FCPA enforcement pause and setting future priorities:

- Focus on misconduct linked to cartels/TCOs, use of money launderers or shell companies, and bribes to state-owned entities or foreign officials.
- Heightened risk for companies in sectors with cartel/TCO exposure (agriculture, infrastructure, logistics, defense, life sciences, telecom), especially in Latin America, Africa, China, and Russia.
- Enhanced due diligence: deep beneficial ownership checks, proactive third-party audits, and increased sub-dealer visibility.
- Continued focus on conduct harming U.S. business interests or national security—priority sectors include defense, intelligence, ports, and critical minerals.
- Enforcement targets serious misconduct (e.g., substantial bribes, concealment, obstruction), not routine or low-value business courtesies.

Intersection of Fraud and FTOs

Pursuant to § 219 of the Immigration and Nationality Act (INA), the Secretary of State is authorized to designate an entity as a Foreign Terrorist Organization (FTO) if the entity meets three criteria:

FTO
Designation
Criteria



- ▶ The entity is a **foreign organization**
- ▶ That **engages or has the capability and intent to engage in “terrorist activity”**
- ▶ That **threatens** the security of U.S. nationals or the national defense, foreign relations, or economic interest of the United States.

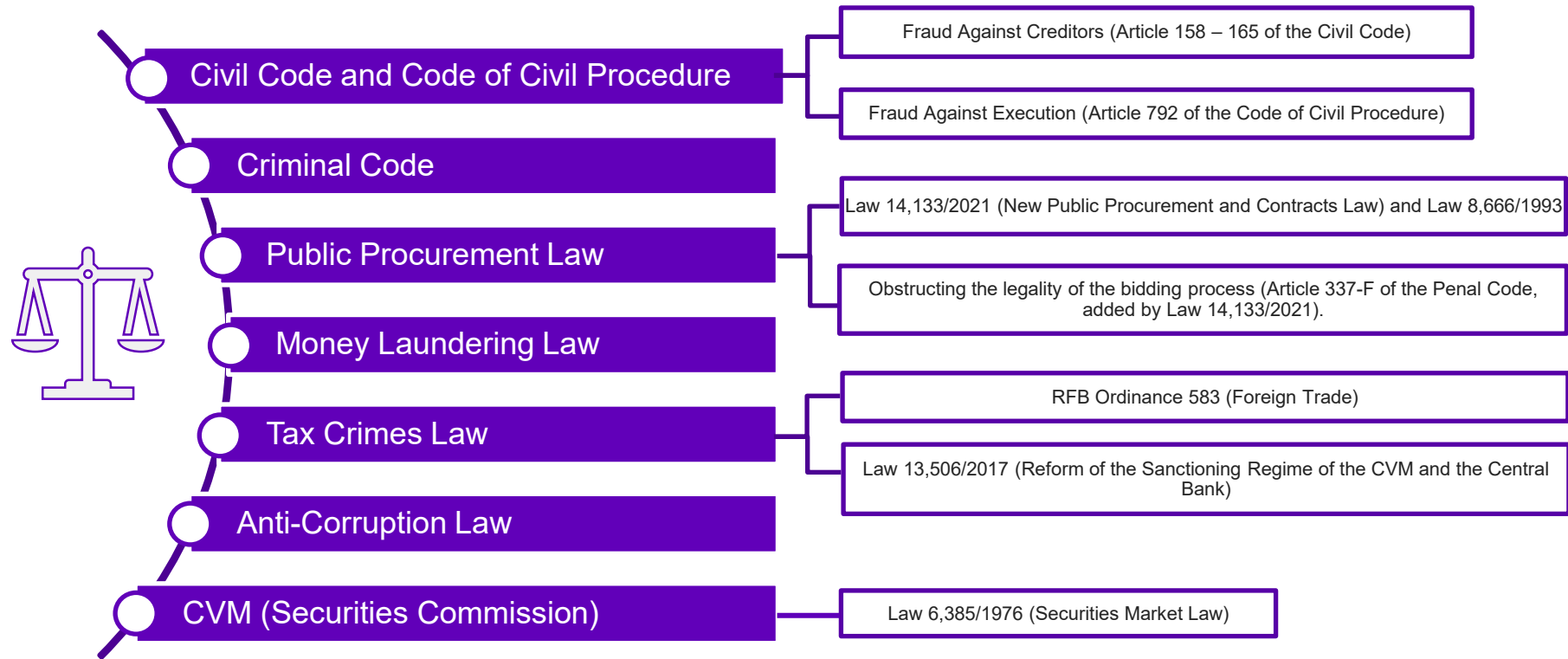
Financial Support to Support Terrorism

Individuals or entities may commit financial fraud (wire fraud, bank fraud, or money laundering) to raise, move, or conceal funds for the benefit of an FTO which could lead to enhanced criminal charges under anti-terrorism laws.

Material Support Statutes

Under U.S. law, it is illegal to knowingly provide “material support or resources” to an FTO, activities which include misrepresenting the purpose of donations, falsifying financial records, or using shell companies.

Regulatory Landscape



Regulatory Updates

RFB Ordinance 583

*This Ordinance provides for measures to **combat crimes and other illicit acts related to imports, especially fraud that implies concealment of the taxable person, the real seller, the buyer or the person responsible for the import operation.***

- **Priority treatment for tax and customs crimes**, with articulation between areas of the Federal Revenue Service and other public security agencies
- Actions to collect evidence, with police support, when necessary, in order to ensure the integrity of the agents and the effectiveness of the operations
- Specific restrictive rules for the advance customs clearance of oil, ethanol and fuels, requiring formal consent from the Federal Revenue Service
- In cases of early dispatch of fuels, it will also be necessary to obtain the consent of the state tax authorities of the place of the importing establishment and the tax authorities of the place where the fuel is unloaded, reducing the risks of fraud against the local administration
- Tightening of the qualification requirements for importers of fuels and petroleum products.

SEGURANÇA PÚBLICA

AGU cria grupo especial para buscar reparação de danos causados por fraudes ao INSS

Advogados públicos atuarão também para reaver os valores descontados ilegalmente de aposentados e pensionistas

*AGU creates special group to seek compensation for damages caused by INSS fraud
Public lawyers will also act to recover amounts illegally deducted from pensioners*

Special Group to seek redress for damages caused by fraudulent actions against the National Social Security Institute (INSS). The team was responsible for promoting the recovery of amounts irregularly deducted from retirees and pensioners, insured under the General Social Security System (RGPS). Made up of eight public lawyers, the collective is temporary and is working in the administrative (extrajudicial) and judicial spheres relating to the matter. The members were appointed by the AGU's senior management bodies: The Federal Attorney General's Office (PGF) and the Federal Attorney General's Office (CGU).

INVESTIGAÇÃO

CGU instaura 40 Processos de Responsabilização contra entidades e empresas por fraudes nos descontos associativos do INSS

Conduitas apuradas estão enquadradas na Lei 12.846, de 2013

*CGU opens 40 Accountability Proceedings against entities and companies for fraud in INSS association discounts
The conducts investigated fall under Law 12.846 of 2013.*



Fraud: Brazilian Context & Key Findings

Source: PwC Survey

Procurement Fraud & Third-Party Risk

Procurement fraud is a key concern; only **26%** of Brazilian companies use analytics to detect unusual bids

- Nearly **10%** use no analytics tools at all.

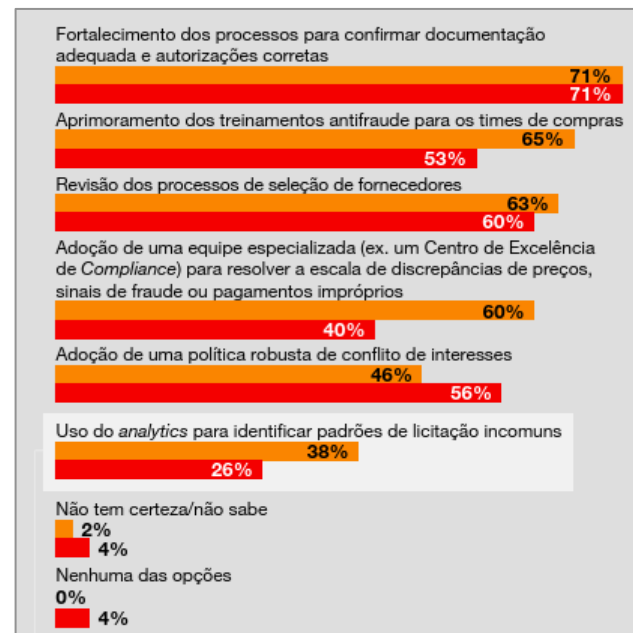
Third-party risk management is often neglected:

- 42%** lack structured third-party risk programs; many do not score suppliers

Aggravating Factors in Brazil

- Entry of multinationals into new markets increases exposure to bribery, corruption, and ESG risks
- M&A activity and complex supply chains can create hidden liabilities
- Rising regulatory and public pressure on ESG practices, including labor standards and export controls

What measures, if any, is your company taking to mitigate the risk of procurement fraud?



<https://www.pwc.com.br/pt/estudos/servicos/consultoria-negocios/2024/pesquisa-global-sobre-fraudes-e-crimes-economicos-2024.html>



Fraud: Brazilian Context & Key Findings

Source: PwC Survey

Insights

- Encourage a whistleblowing culture;
- Maintain a robust conflict of interest policy;
- Eliminate silos between departments;
- Explore experiences with AI and generative AI;
- Strengthen your internal controls.

What measures, if any, is your company taking to mitigate the risk of procurement fraud?

60%

das empresas brasileiras têm uma equipe de *compliance* centralizada (por exemplo, um Centro de Excelência de *Compliance*) para resolver discrepâncias de preços, sinais de fraude ou pagamentos impróprios

31% América Latina

38% Ásia-Pacífico

34% África

43% Europa Ocidental

35% Europa Central

53% América do Norte

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Strategic Approaches – An Effective Compliance Program

While the U.S. regulatory environment is evolving, companies are still expected to comply with international statutes. The DOJ's Evaluation of Corporate Compliance Programs ("ECCP") guidelines remains at the gold standard for programmatic assessment.

- To determine whether a company's compliance program meets regulatory expectations, you want to look at:



What to Ask as a Member of the Senior Leadership

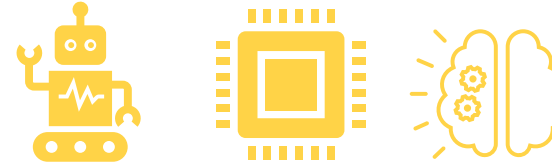
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|---------------------|---|
| Knowledge |  How are the legal and compliance, risk, and finance functions governed and resourced? For instance, is there a Chief Compliance Officer and to whom do they report? |
| |  Are there pre-investment due diligence recommendations to implement? Areas where due diligence was more limited? How should these be triaged with other priorities? |
| Critical Assessment |  Is there a clear process for receiving, investigating, escalating whistleblowing reports? |
| |  Have expectations regarding updates and reporting from management around legal and compliance issues clearly communicated? |
| |  Are there higher-risk areas of the business that you need to understand better, or have more or better access to management? |
| |  Has there been a recent risk assessment conducted and what is the status of remediation / introduction of control measures on high-risk areas? |
| |  Is there a compliance strategy and is there a plan in place to assess the effectiveness of the compliance program against recognized frameworks? |
| Levers |  Are we having honest conversations with management about issues that have arisen and how they are being managed? |
| |  Am I keeping up with changes in any changes in management? |

Strategic Approaches – Monitoring, Oversight & Useful Metrics



Data Analytics

The use of data, code, and visualizations to answer specific questions to support decision-making.



Artificial Intelligence

Computer interfaces that can perform tasks that typically have required human intelligence. Some are autonomous, some are human directed.



AI is a tool that can be used in Data Analytics, but one does not replace the other.

Whistleblower Incentives and Protections



DOJ is focused on companies' commitment to whistleblower protection and anti-retaliation.

- In May 2025, DOJ revised its guidance addressing the Corporate Whistleblower Awards Pilot Program.
 - Under the pilot program, a whistleblower who provides the Criminal Division with original and truthful information about corporate misconduct that results in a successful forfeiture may be eligible for an award.
- The information must relate to one of the following areas:
 1. Certain crimes involving financial institutions, from traditional banks to cryptocurrency businesses;
 2. Foreign corruption involving misconduct by companies;
 3. Domestic corruption involving misconduct by companies; or
 4. Health care fraud schemes involving private insurance plans.

Whistleblower Incentives and Protections – Implications for Compliance Programs



Regulators are ramping up incentives for companies to proactively report internal whistleblower reports.

- After the DOJ amendments to its Voluntary Self-Disclosure Policy, companies may be able to avoid prosecution for alleged misconduct if they report internal whistleblower reports to DOJ within 120 days after receiving them.
- Companies wishing to take advantage of this amendment may want to report as soon as possible, rather than waiting for the full 120-day grace period.
 - If the whistleblower who made an initial internal report opts to go directly to DOJ or another agency, as they are increasingly incentivized to do, their company may no longer be able to take advantage of this initiative.

This reinforces the need for an anonymous, publicized, and easily accessible internal whistleblower hotline, such that companies can be knowledgeable of and address employee concerns as soon as possible.

Strategic Approaches – Crisis Management

Planning for a Crisis



When a Crisis Hits



What Not to Do



Managing During a Crisis



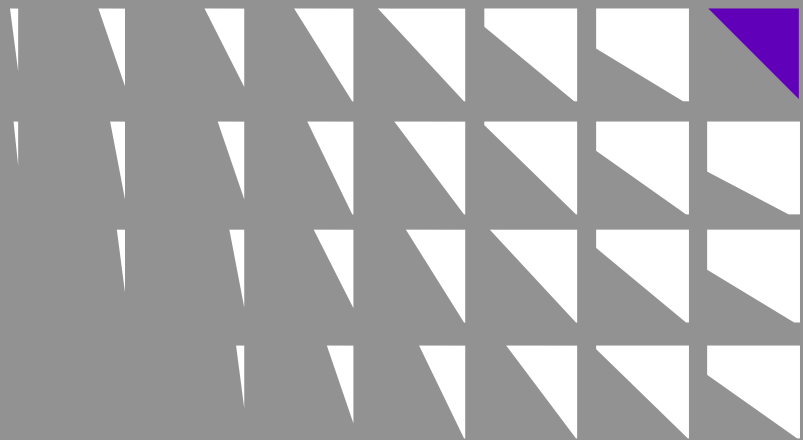
Emerging from a Crisis



**Fraud Enforcement Around
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**Thank you for
your participation.**





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Together in the decisions
that matter.

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