Linklaters

Issues for Financial Sponsors and their portfolio companies

Planning ahead in volatile times

Spring 2025

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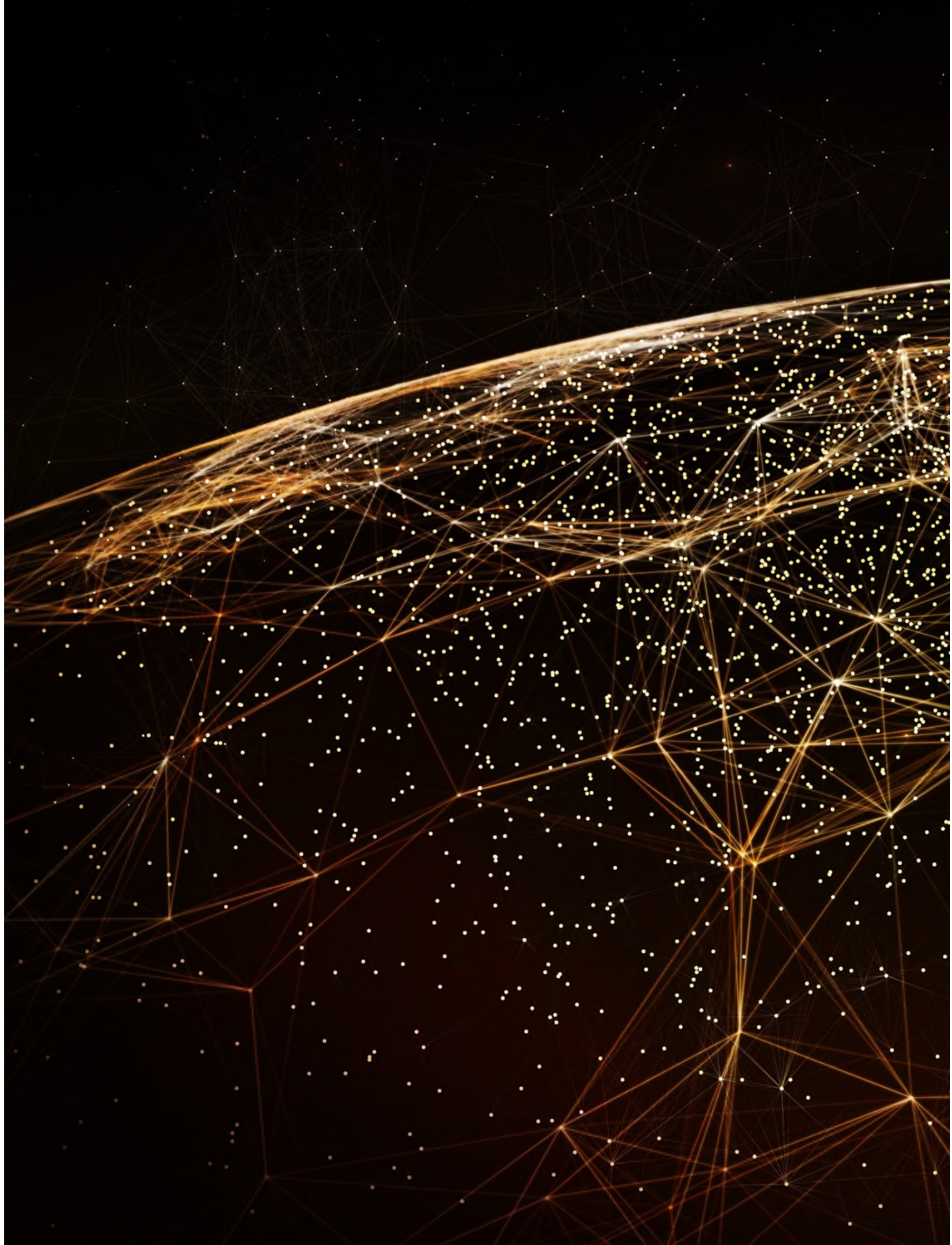
Contents



Introduction

These are indeed volatile times. Businesses have formidable challenges to navigate: from the implications of a global trade war and the ripping up of political norms, to keeping pace with the rapidly changing legal, regulatory and risk environment.

We hope that this 2025 edition of Issues for Financial Sponsors and their portfolio companies offers some practical guidance to help you navigate this environment and plan ahead.

First, we look at contingency planning for sponsors and portfolio companies who might find that it becomes difficult or undesirable to continue to hold investments or operate in a particular country. By mapping and limiting dependencies, you may be able to reduce risk and increase your exit options.

Regulatory fragmentation is growing. While ESG disclosure obligations are being recalibrated, climate change poses real threats and will still feature in many companies' disclosures. For those looking to AI to enhance or transform their business, we give an update on AI governance, reflecting developments in practice and technology over the last two years.

In relation to acquisitions or disposals, we discuss the potential for more transactions with UK impact to be permitted, as regulators are being urged to take a more pro-growth approach.

Fake news and fraud prevention are our final topics. Misinformation and disinformation are nothing new, but we offer a few reminders of defensive steps. A new UK corporate offence of failure to prevent fraud will have an impact on sponsors and portfolio companies operating in the UK. We explain how to gain protection by putting in place "reasonable procedures" to prevent fraud.

We hope that you will find the practical steps and issues to consider outlined in this publication useful.

Please contact any of the authors (or your usual Linklaters contact) if you would like to discuss any of these issues further.

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1 Business planning in an unpredictable world

The alliances, institutions and norms that have underpinned the international order for decades are undergoing seismic shifts. Global businesses are facing tariffs, trade wars, regulatory disharmony and a broader range of powerful state and non-state actors exerting influence. In some cases, the changing geopolitical climate could render investments or operations within a region or country no longer viable or desirable.

Sponsors must take steps to anticipate this type of risk and understand all available options in case fundamental changes to portfolio regional strategies are required. Sensible preparations will help to enable faster decision-making if and when needed.

Lessons can be learned from the high-profile experiences of companies exiting, scaling back or otherwise restructuring their operations in Russia in recent years – and those businesses that went through that experience may be better prepared to manage such changes in the future. However, for many, exiting Russia was 'difficult but do-able'. In contrast, exits or restructurings in other jurisdictions could be far more challenging, whether due to the scale of operations in a particular region or the complexity of carving out and separating integrated businesses.

So what are the key issues to consider when contingency planning?

Stakeholder alignment and a spectrum of options

Key decision makers may not initially agree on the best way forward. It will therefore be important that a range of thought-through options are available to choose from. Potential responses may include full-scale M&A, management buyouts, synthetic structures and hybrid exits (e.g. IPOs or partnering with local businesses). In many cases, the challenge of disentanglement may mean that an outright exit is not feasible, making some form of strategic re-organisation more appropriate. What is clear is that businesses are unlikely to be able to predict with certainty now the best outcome for the future.

This means that having a range of options to consider for your portfolio is key to maintaining flexibility alongside swift decision-making.

The importance of being dynamic

You may have to act more quickly than you expected. There is an adage about bankruptcies that we have generally found to be true: they 'happen gradually and then all at once'.

The same applies to crisis situations. A single, unexpected development can cause similarly affected businesses to respond *en masse*, increasing the need to move quickly in an environment of heightened public scrutiny.

Forewarned is forearmed

The difficulties of carving out a fully integrated business should not be under-estimated: whether you exit or undertake a strategic re-organisation of a portfolio company, it is imperative to know in advance – and it will save a lot of time and costs later – what key dependencies and pinch points exist between a potential problem jurisdiction and the rest of your international portfolio.

1 Business planning in an unpredictable world

Due diligence will help decision-making

When decisions need to be made, it will help if the groundwork has already been done to:

> Understand asset locations, including where data is stored, map dependencies, and consider key junctures for flows of funds, goods and supplies between jurisdictions,

> consider the location and interdependencies of IT systems, especially if any part of your portfolio companies' operations is outsourced to a jurisdiction that may be more volatile or prone to instability in the future. For example, in a digitally-driven consumer market, intellectual property can be material to enterprises' revenue streams. Depending on whether offshore or local entities control key branding and other IP assets, operations and legal teams will need to consider whether restructuring of IP portfolios could be carried out now to make business lines more resilient, and

> to the extent practicable, ensure that key management is located outside more challenging jurisdictions to facilitate decision-making without personal risk. The safety and wellbeing of employees will always be paramount.

Careful messaging of plans

The rise of social media means that even the most responsible businesses are vulnerable to disinformation (see "Attacks on your reputation: managing misinformation" below). Contingency planning should ensure that any messaging to staff – both local and global – regarding strategic decision-making is as carefully considered as that to fund investors or portfolio companies' suppliers and customers.

Developing in advance a comprehensive communications plan and cascade, including public relations responses, is key to protecting your value, in-country assets and the wellbeing of your employees at both sponsor and portfolio levels.

Beware the "hostage to fortune"

Clear lines of communication between sponsor and portfolio levels, as well as global and local management, are crucial, as is having draft responses in case of leaks or misinterpretation.

It is particularly important to test communications and key messaging to understand whether public statements may have broader consequences – especially if you do not yet have all the information to hand. This better ensures that you will be able to stand behind those statements in the future.

1 Business planning in an unpredictable world

Issues for you to consider

> What preparatory work does it make sense to do now so that you are able to identify and mitigate risks and stay ahead of your portfolio companies' competitors in a tough market?

> How often should continuity be reviewed and debated? Sanctions, tariffs, and trade bans against goods or suppliers can be imposed very quickly and have a significant impact on the viability of your portfolio companies' operations.

> Have potentially problematic regions within your portfolio been identified? Is there a clear understanding of what assets would remain there and what can be transferred or replaced if you were to reduce your interests or withdraw from the market? IP, supply chain, data, and sales distribution arrangements are likely to be priorities. The safety of employees will be paramount.

> What systems do your portfolio companies have to proactively monitor and react to regulatory proposals and changes in their home jurisdiction and other key revenue markets? Are their relations with regulators, politicians and trade bodies sufficiently developed to allow early understanding of, and ability to comment on, proposals where possible?

> What is the sign-off procedure for your communications, both at sponsor and portfolio levels? Should holding statements for portfolio suppliers, customers and employees be prepared and approved – how about for fund investors? Ensuring that these are in line with overarching regulatory obligations will be key to avoiding unnecessary extra scrutiny.

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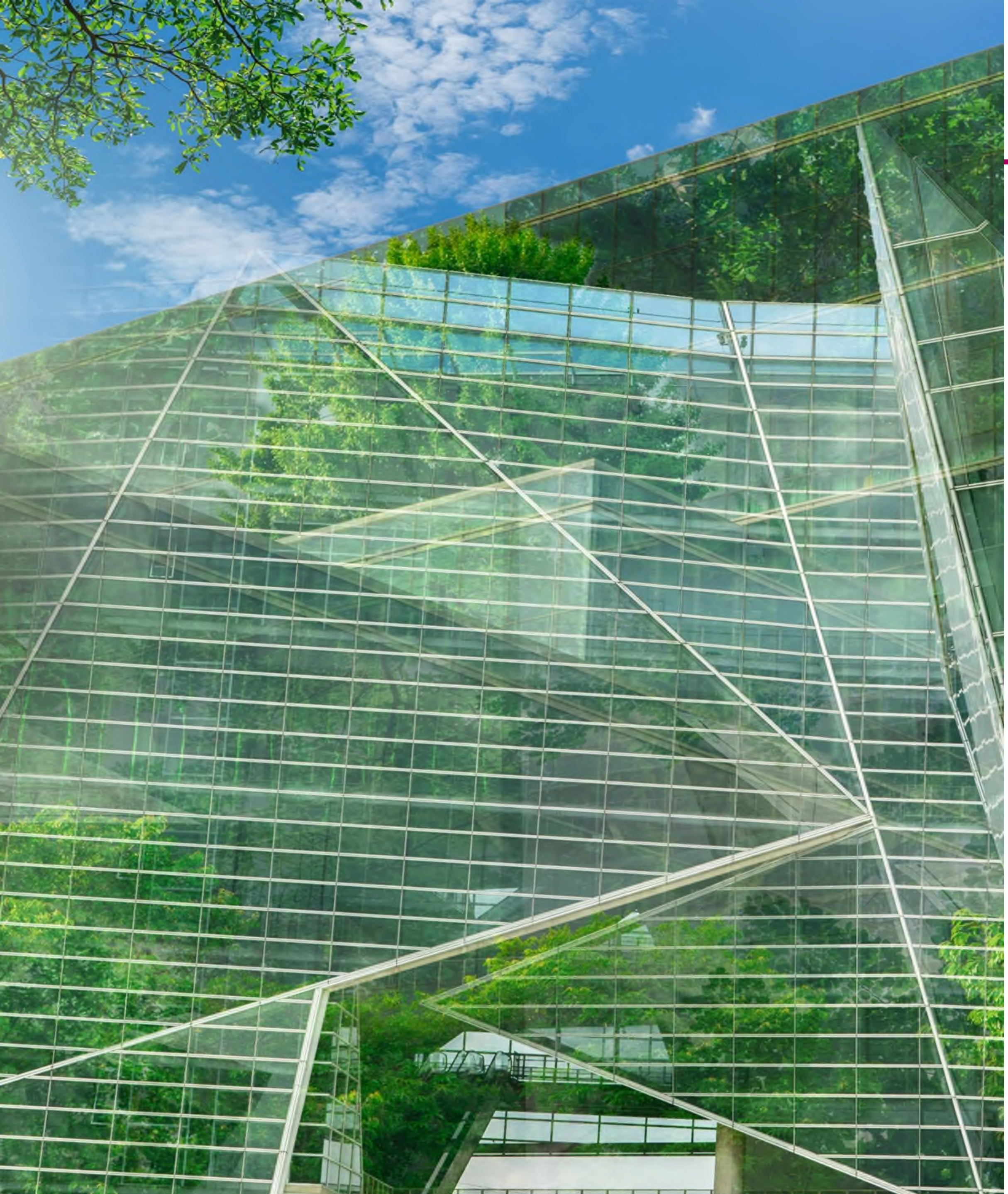


2 Is ESG dead? Far from it

The EU is pursuing a simplification of its sustainability rules, and federal climate disclosure regulation in the US is likely to be rolled back. But it is clear that, to borrow from Mark Twain, reports of ESG's death have been greatly exaggerated. The EU's level of ambition has not changed significantly, and it remains committed to the wider energy transition and decarbonisation agenda. The UK is also accelerating its clean energy agenda, and several US states are enacting their own ESG disclosure regulations, not to mention that many organisations have already concluded that climate change is, and remains, a principal risk to their businesses.

Consequently, sponsors and portfolio companies will still need to navigate an evolving and increasingly fragmented regulatory environment.

The last few years have seen ESG policy and regulation across the globe develop at a rapid pace, with new regulations focussed especially on climate-related financial reporting and due diligence requirements. But with many economies concerned about competitiveness and rising energy costs, and the impact of increased regulatory burdens on businesses, we are now seeing various governments reflect on, review, and in some cases re-calibrate their ESG regulation.

2 Is ESG dead? Far from it

European Union: Simplification but overall ambition remains

The EU – which has been the leader in sustainability regulation – is now embarking on a simplification project (the so-called "Omnibus package") aimed at reducing the regulatory burden on business of complying with its sustainability reporting and due diligence rules. The particular focus is on the Corporate Sustainability Reporting Directive (CSRD), the EU Taxonomy and the Corporate Sustainability Due Diligence Directive (CSDDD). The Omnibus package includes proposals to extend reporting timelines, reduce the number of companies in scope, reduce the number of disclosures and clarify specific requirements under the CSRD and CSDDD.

These proposals are still at an early stage, and it remains to be seen what the final, agreed changes will be.

We recommend that in-scope organisations should continue to prepare for compliance while keeping a close eye on developments. The Omnibus package is intended to simplify the sustainability requirements and give businesses more time to prepare, not do away with these rules completely.

United States: Federal rollbacks vs. state-level initiatives

In the US, the Trump administration has already made several executive orders targeting climate and energy regulation. The US has also announced that it will leave the Paris Agreement (again) and the SEC's proposed climate disclosure rules, which were put on pause last year, are almost certainly dead. However, individual states such as California are enacting their own climate disclosure rules which will capture many businesses operating there. In addition, US portfolio companies operating in Europe may also be caught by the various EU sustainability rules (even as amended by the Omnibus proposal), including the CSRD and CSDDD.

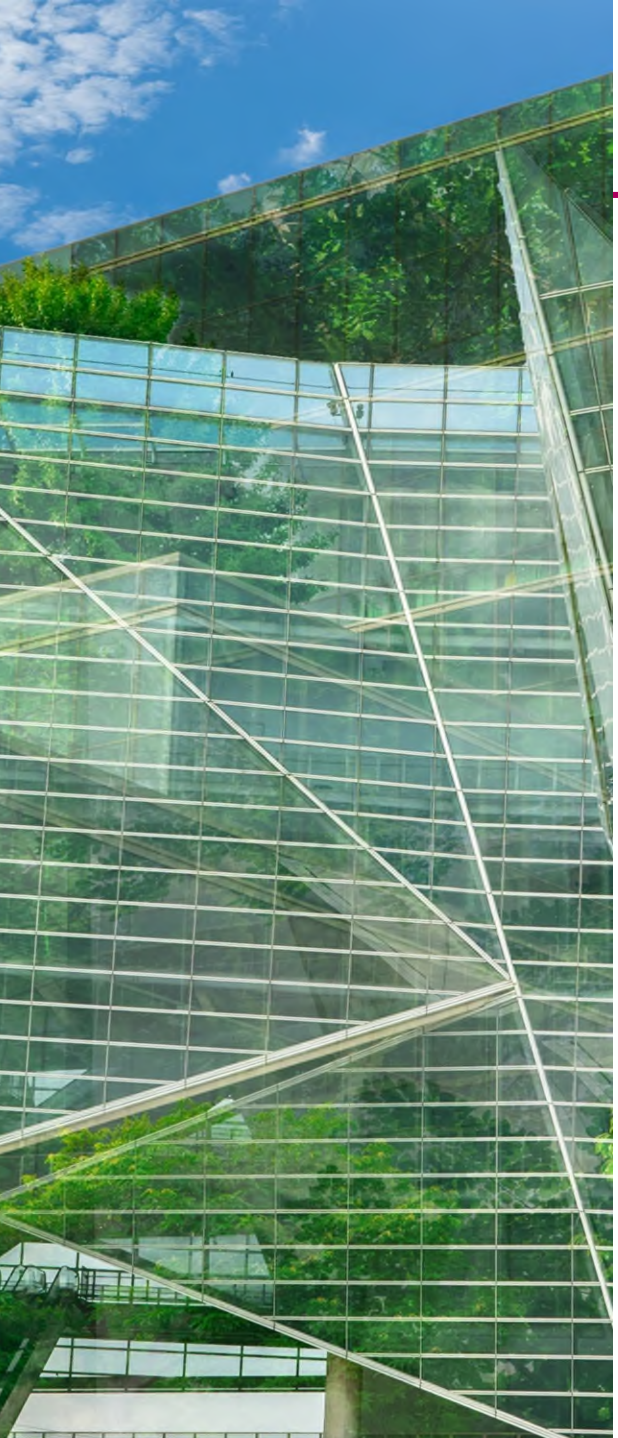
United Kingdom: Accelerating the clean energy agenda

In the UK, the direction of travel is different. Energy transition and net zero policy are still key priorities for the government, which has said that it wants to make the UK a "clean energy superpower" and the "green finance capital of the world". For example, in its Clean Power by 2030 action plan, it estimates a need for a £40bn investment in the UK every year to reach the 2030 goal and more investment afterwards to keep this going, much of which will have to come from private investment. The government is also expected to consult this year on plans to introduce new sustainability reporting rules and transition plan requirements for UK companies.

The UK, along with many other countries, is also in the process of implementing the global sustainability disclosure standards developed by the ISSB.

Implications for you

Sponsors and portfolio companies will still need to work hard on preparing for these regimes and their impacts. This is particularly the case for those with portfolio companies operating across multiple regions, which will wish to develop strategic approaches to compliance that are resource efficient, maximise the potential to create value, and are positioned so as to effectively navigate emerging ESG-related legal risks. Many will be reviewing the continued appropriateness of their climate strategies and sustainability-related communications to key stakeholders to ensure that they are suitably balanced, particularly as 2030 and the maturity of many near-term targets loom large.



2 Is ESG dead? Far from it

Points to help guide your oversight of sustainability strategies in the evolving ESG landscape

> Ensure that your portfolio companies have robust processes for re-evaluating sustainability-related risks on a regular basis. How are they adapting their approach to the shifting external landscape?

> Ensure that your portfolio companies have evaluated the feasibility of existing climate-related targets, assessing whether they can be met. Have you an agreed narrative to explain challenges and dependencies to fund investors effectively?

> Have the sustainability strategies and public positioning, both at sponsor and portfolio company levels, been reviewed against regulatory recalibrations?

> If relevant to any portfolio companies, monitor the progress and final form of the EU's Omnibus package and implications for their compliance strategy.

> Assess the implications of your portfolio companies' international operations, ensuring that they comply with all applicable regimes (for example, different state laws in the US and EU regimes applicable to non-EU entities with EU operations).

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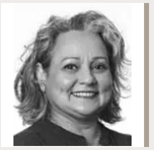

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3 Managing AI risk in 2025: updated guidance

Just two years ago, generative AI was a novelty. Today it's everywhere. Early AI discussions centred on legal topics such as copyright; now we see a surge in AI-specific laws. For sponsors and portfolio companies, managing AI is no longer just good practice – it's a legal requirement. New regulations are making some best practices mandatory.

In 2023, we laid out seven "rules" for dealing with AI. Revisiting these principles now, we assess how far they remain true.

1. 2023: Don't trust it – at least not yet. 2025: Getting better, but you still need to check

We previously warned that AI can provide answers that are very convincing, but these plausible answers can often miss the finer points or produce a response that is entirely wrong – the problem known as "hallucination". Unlike a human expert who might acknowledge their uncertainty when faced with complex issues, AI doesn't always signal when it's operating beyond its knowledge base.

To measure how reliable AI is, we have again tested its ability to provide answers in the area that we know best – providing legal advice. (*See further reading box for a link to our latest benchmarking of major GenAI models.*)

The good news is that accuracy has improved. The bad news is that some answers remain strikingly wrong.

As a result, relying on AI's answers continues to be risky, and regulators have stated that they won't be sympathetic to organisations that have not kept a "human in the loop" to ensure that the AI models continue to function appropriately and that their outputs are correct.

> *… an AI system is only as good as the data and rules on which it is trained.*

2. 2023: Don't tell it anything private or confidential. 2025: Risk remains but can be mitigated if you build your own system

Previously, we recommended ensuring that employees do not include confidential or privileged information in AI prompts or questions, as AI providers will often seek to train their models on users' data. As a result, you risk your confidential or privileged information being disclosed.

Today, organisations can reduce the risks by developing their own internal proprietary versions which do not share data externally. If still relying on externally hosted AI systems, organisations should implement thorough due diligence procedures and obtain contractual assurances about data usage. On acquisitions, the target's use of AI systems and points for vulnerability should be key focus areas in the due diligence phase.

3. 2023: Make sure third parties don't rely on its output. 2025: Regulation and reputation mean that organisations must take a degree of responsibility for outputs

Organisations are accepting that they will need to take more responsibility for the outputs generated by the AI they use. While emerging AI legislation places a level of responsibility on AI developers, a considerable burden remains on sponsors and portfolio companies to manage their entire AI processes.

Cases of loss and harm from the use of AI are increasing – from trucks sold by chatbots for $1, to dangerous malfunctions in factories – and this has spurred regulators to impose a range of restrictions, including binding industry standards and regulatory filings for certain high risk use cases.

In addition, there are requirements to make sure that AI systems are appropriately risk-assessed, and that customers are always aware when they are dealing with the output of an AI, rather than a human.

As with the adoption of any new technology at scale, failures and liabilities will arise, and it will be key for organisations to be ready to "fail fast", adopting systems and controls to ensure that such failures are appropriately monitored, caught and contained to minimise impact. When evaluating acquisitions, sponsors should also assess whether such procedures have been put in place by the target.

4. 2023: Be alert that some intellectual property issues are unresolved. 2025: This remains the case, and data enforcement is increasing

One of the first battlegrounds for AI was intellectual property law. A significant amount of litigation has occurred over the last few years, particularly in the US, concerning the use of copyrighted materials to train AI models.

While some jurisdictions are beginning to clarify how their local intellectual property rights laws apply to AI, the global situation is far from consistent. This includes uncertainties as regards ownership of outputs and rights to scrape content from third parties, while many data protection regulators are enforcing against companies that seek to use personal data to train their models.

These evolving rules reflect the increasing value that organisations and individuals attribute to their data and should also be reflected in the due diligence undertaken on targets as part of any acquisition. It is crucial that lawyers work closely with technology and marketing teams, both to restrict other companies from using your valuable content for free in training their models, and to prevent your own technology from infringing the rights of others.

3 Managing AI risk in 2025: updated guidance

5. 2023: Be careful about bias and discrimination. 2025: That advice remains. Ensuring data integrity is key to successful deployment of AI

As AI's use becomes more pervasive, so do the potential risks of training AI on unrepresentative data sets or designing AI recommendation processes without fully considered ethical guardrails.

There have been high-profile examples of AI-driven gender discrimination in recruitment, and race discrimination in criminal sentencing guidelines.

Even where technology companies have sought to ensure that certain groups were not under-represented in their AI outputs, this has caused its own issues.

These are risks that can only really be tackled by close co-operation between technology, procurement and legal functions.

Successful adoption of AI demands an increased focus on data provenance and integrity, as well as training and testing – an AI system is only as good as the data and rules on which it is trained.

6. 2023: Consider outsourcing rules. 2025: Equal focus on supply chain and staff

Previously, we noted that supply chains were being disrupted by the introduction of AI, and customer organisations are establishing their own terms and rules regarding the use of AI to ensure compliance with procurement and outsourcing rules.

Focus is now shifting to the longer-term impacts of increasing AI adoption on staffing requirements, and the balance between AI as assistant and AI as replacement for human resources. The near-term focus remains on training – enabling the organisation to gain maximum benefits from the use of the technology and ensuring that staff can adapt as effectively as possible to this new form of hybrid working.

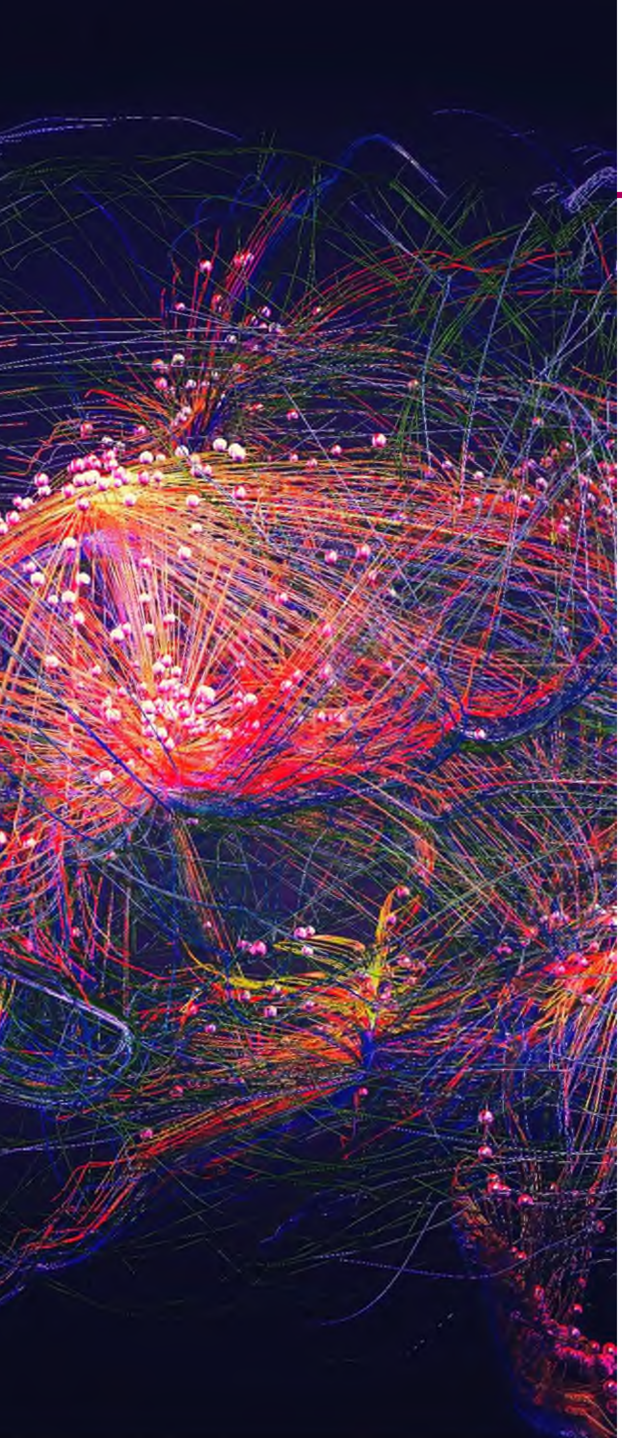
7. 2023: Be ready for regulation. 2025: Focus on managing risks

Back in 2023, our final recommendation was to prepare for regulation. That regulation has arrived, and the focus is now on how to manage the risks.

The main thrust of much of the regulation is to compel organisations at each level of the AI supply chain to adopt appropriate pro-active controls. This includes monitoring and cataloguing the introduction of AI, assessing data sources, implementing cyber-security controls, addressing bias/discrimination risks in models, and ensuring that the organisation understands how the technology works and can explain its outputs to management, customers and regulators. It is also essential to be able to explain how the organisation mitigates the potential harm from these technologies.

AI use cases can materialise in all lines of business and central functions, meaning that specialists from the impacted areas need to be involved early in assessing the unique risks for their area, using tools provided by the legal, compliance and risk teams. Having a distributed AI governance model avoids the management log-jam that afflicted overly centralised AI control functions in previous years.

Regulations have also started to impose AI literacy on organisations, introducing an expectation that staff are trained on the impacts of using AI, management are conversant with the risks to which the organisation is exposed and informed decisions are made. In turn, boards must be provided with sufficient information about relevant strategic AI issues, including how the technology is being used, and the associated legal, operational and ethical risks and mitigants.



3 Managing AI risk in 2025: updated guidance

Issues for you to consider

Today's AI landscape demands that organisations do more than simply adopt powerful tools. They must build robust governance and training structures, maintain thorough oversight, and engage in continuous risk management. Making sure that you can explain how you and your portfolio companies use AI and mitigate its risks is no longer optional – it's now a legal necessity.

> Do you have a good understanding of how AI is being used at sponsor level and by your portfolio companies, and the longer-term structural impacts?

> How are legal and ethical considerations being managed? Do relevant individuals input effectively into decisions regarding deployment of AI?

> How do you and your portfolio companies ensure that any issues that do occur are effectively identified, escalated and addressed?

> How are you and your portfolio companies being protected in the short and long term from the risks and evolving to exploit the opportunities arising from AI technologies?

Resources

> Updated AI Toolkit - Ethical, safe, lawful: A toolkit for artificial intelligence projects | Linklaters

> UK – The LinksAI English law benchmark (Version 2)

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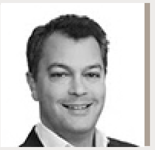

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4 Competition regulation: a lighter touch?

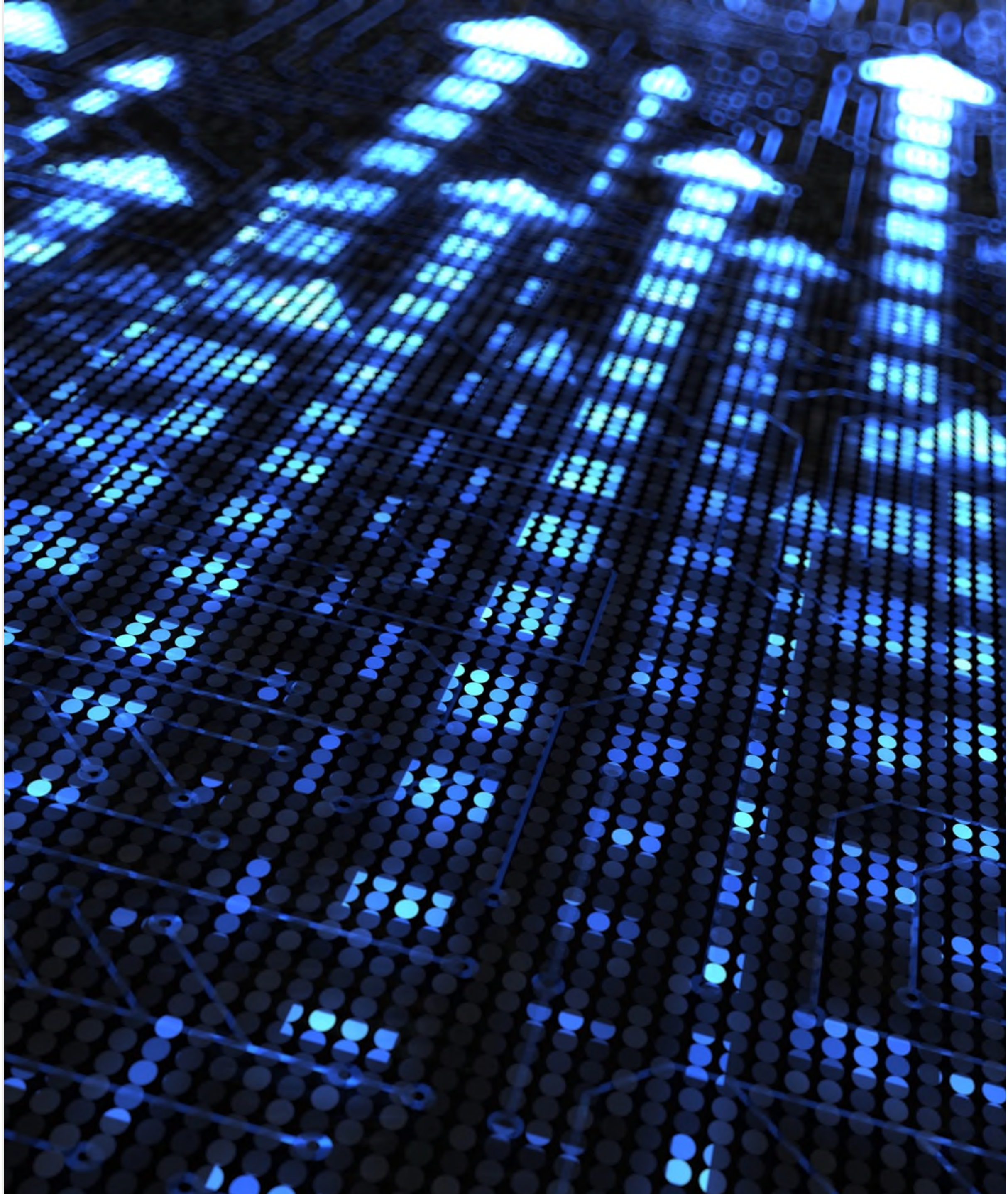
Recent months have seen clear political pressure on regulators to adjust their processes to promote broader government policy goals. The political climate – in the UK, US and EU at least – is now very much focussed on the pursuit of growth. When undertaking M&A, sponsors can cautiously anticipate more efficient antitrust processes, a lower intervention rate and increased willingness to approve deals on the basis of a broader range of remedies.

However, whilst interventions by regulators with respect to merger control may be rolling back slightly, the review of transactions under foreign investment-related legislation is not, so expect regulatory hurdles to remain.

UK: Growth agenda brings welcome changes for UK-based M&A

In the UK, the most dramatic indicator of this pro-growth agenda impacting on competition policy was the government's surprise removal of the chair of the Competition and Markets Authority (CMA) in January 2025. The UK government has provided the CMA with a new strategic steer emphasising that it should act proportionately, focussing on growth and investment.

The CMA has committed to making the merger investigation process quicker and more straightforward and predictable. It has also announced that it will focus its attention on deals "with a distinct and direct UK impact" (as against those where it may be more appropriate to let other global competition authorities take the lead, where their actions might resolve any UK concerns).



4 Competition regulation: a lighter touch?

We expect new appointments to the CMA's decision-making panel later this year to include more panel members with a business background and private sector expertise.

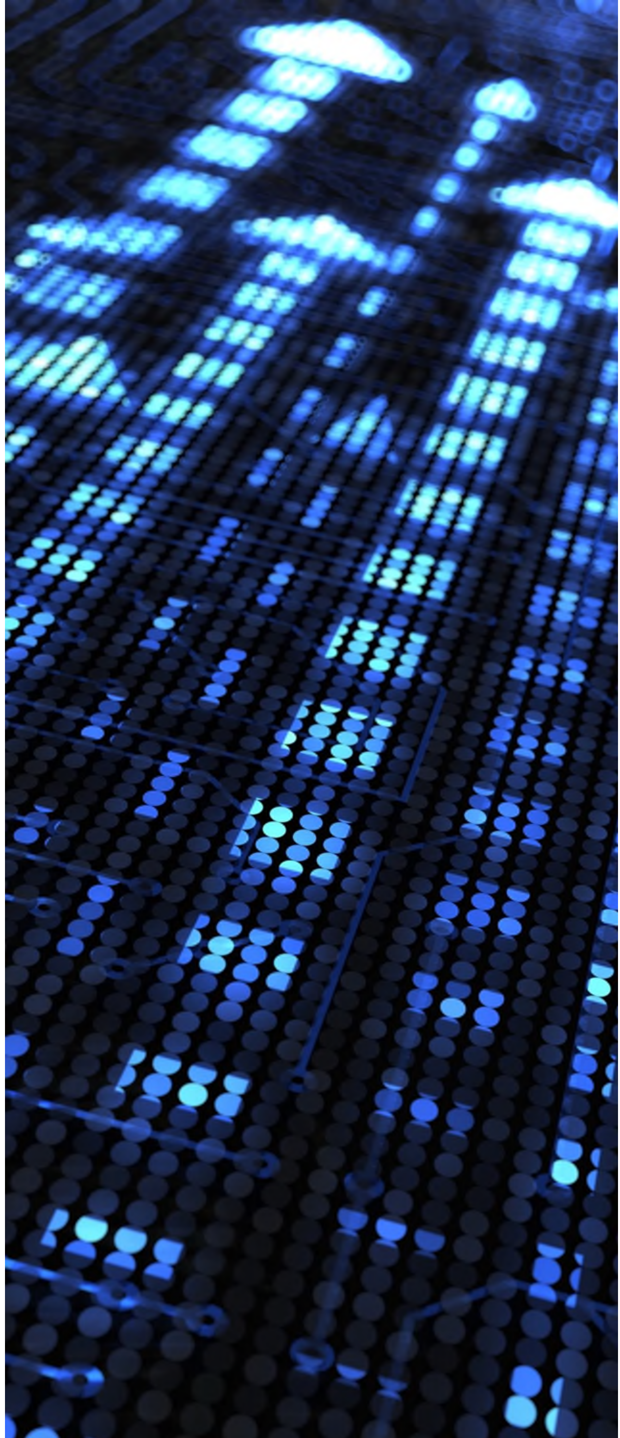
The CMA has already shown signs of change. December 2024 saw the clearance of the Vodafone/Three joint venture with a bespoke behavioural remedies package (including commitments relating to investment, contract terms and tariffs). The CMA has signalled an increased appetite to consider behavioural remedies in appropriate cases and is conducting a review of its remedies policy. In March 2025, the CMA unconditionally cleared the merger between business travel management companies Amex GBT and CWT, in a reversal of its Phase 1 and interim Phase 2 findings that the merger would lessen competition.

How far the CMA will go remains to be seen – currently, it retains a very broad jurisdiction to review transactions, and this was expanded by the Digital Markets, Competition and Consumers Act in January 2025. However, in March 2025, the Chancellor Rachel Reeves raised the prospect of introducing legislation to update and narrow the CMA's ability to investigate mergers. Whilst changes to the CMA's jurisdiction will not happen overnight (they require new legislation to be passed), this announcement is further evidence of the changing political headwinds signalling a less interventionist, more permissive CMA.

Even in advance of any legislative change, sponsors can already be cautiously optimistic that merger vetting processes will be quicker and more transparent, with fewer interventions and outright prohibitions.

In contrast, there does not seem to be a similar effort to relax regulatory oversight of foreign investment. The UK government has not suggested reforming the foreign investment screening regime introduced under the National Security and Investment Act 2021 and, as geopolitical tensions increase, we expect scrutiny of deals involving acquirers buying UK companies and assets which operate in national security-related (or otherwise "sensitive") sectors to continue. The focus on foreign investment regulation in the UK is mirrored globally, with the long-standing CFIUS regime continuing to operate in the US and an increasing number of member states throughout the EU introducing their own domestic foreign investment screening regimes.

Note also that the Digital Markets, Competition and Consumers Act 2024 gives the CMA new powers to enforce consumer protection laws directly, with new powers to fine companies up to 10% of global turnover. All consumer-facing portfolio companies should consider the impact that these regulatory changes will have on their business practices.



4 Competition regulation: a lighter touch?

EU: Changes to EU merger policy likely to be an evolution rather than a revolution

In the EU, there have been similar calls for a change in the direction of merger policy, most prominently in the Draghi Report on the Future of European Competitiveness published in September 2024.

The new head of EU competition enforcement, Teresa Ribera, has been given the green light by the President of the European Commission, Ursula von der Leyen, to implement a new approach to competition policy, broadly reflecting the more moderate recommendations of the Draghi report, including modernising the EU's competition policy to support innovation and environmental standards, and to give sufficient weight to resilience and efficiency when investigating mergers.

We expect that the policy of the European Commission is likely to change gradually, rather than radically as Mr Draghi recommended, to preserve the "boringly predictable" strategy of the previous European Commission antitrust policy, but we expect that the European Commission may look for a poster-child case to show it is more flexible.

For this reason, the right deal in the right (strategic) sector with the right rationale (innovation, investments, etc.) could get more traction and be looked on more favourably now than a year ago.

US: Hints of a pro-business approach to enforcement absent substantial change

Whilst similar pro-growth themes have been talked about in the US, this has not (yet) manifested itself in material changes to merger control policy under the new Trump administration. Perhaps surprisingly, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have confirmed that they will not revoke the joint 2023 Merger Guidelines that outlined an ambitious enforcement framework.

They have also retained new rules significantly expanding the information and documents required to be provided as part of merger control filings.

In a more encouraging move for sponsors looking at US-based targets, the new FTC leadership has suggested that the agency will take a more business-focussed and practical approach to enforcement. While remaining open to considering competition issues in some novel ways, the leadership has signalled that they will be more decisive in identifying deals that raise potential issues and streamlining the review of those that do not.

Enforcement focus is expected to remain on big tech companies and those selling consumer products, as these have been a priority since the first Trump administration.

In addition, we expect to see the FTC and DOJ considering divestitures that remedy competition concerns with an eye towards permitting deals to close, rather than resorting to litigation. The broader approach of the Trump administration suggests that active co-ordination with other global antitrust regulators will be limited.

China: Complex cases remain subject to detailed review

The Chinese competition regulator (SAMR) has further improved its (already efficient) simplified procedure for reviewing mergers. Reviews of uncontroversial transactions are increasingly prompt and often quicker than other similar international regulators. However, still expect close scrutiny if your transaction has higher risk characteristics, is high-profile, involves a sensitive sector or is susceptible to geopolitical tensions. SAMR also has broad powers to review mergers and a track record of calling in below-threshold transactions.

4 Competition regulation: a lighter touch?

What does the current antitrust environment mean for you?

> There may be cause for optimism. Sponsors can expect more procedural efficiency and more pragmatic approaches to assessing remedies in order to permit rather than prohibit deals, especially in the UK. There is a sense of cautious optimism that fewer mergers globally will be prohibited outright.

> Antitrust regulators are expected to remain active and, in the UK at least for now, will continue to have broad jurisdiction to review transactions. Sponsors are therefore advised to consider the implications of, and strategy for, engaging with antitrust regulators at the outset of any transaction.

> Consideration should continue to be given to whether foreign investment filings are required as more countries introduce screening regimes and inbound and outbound foreign investment is more heavily scrutinised amidst growing trade tensions.

> For consumer-facing portfolio companies with a nexus to UK consumers, a consumer compliance audit is recommended. Consumer protection compliance policies (relating to both existing and new rules) should be reviewed.

Resources

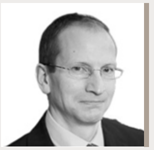
> Pro-growth merger control, or how the CMA learned to stop worrying and love mergers

> The Competitiveness Compass: recalibrating the true north for merger control?

> Back from the Brink: US Agencies Walk Back the Most Extreme HSR Proposals

> UK Consumer Protection: Compliance guidance on pricing, urgency and green claims

Contacts



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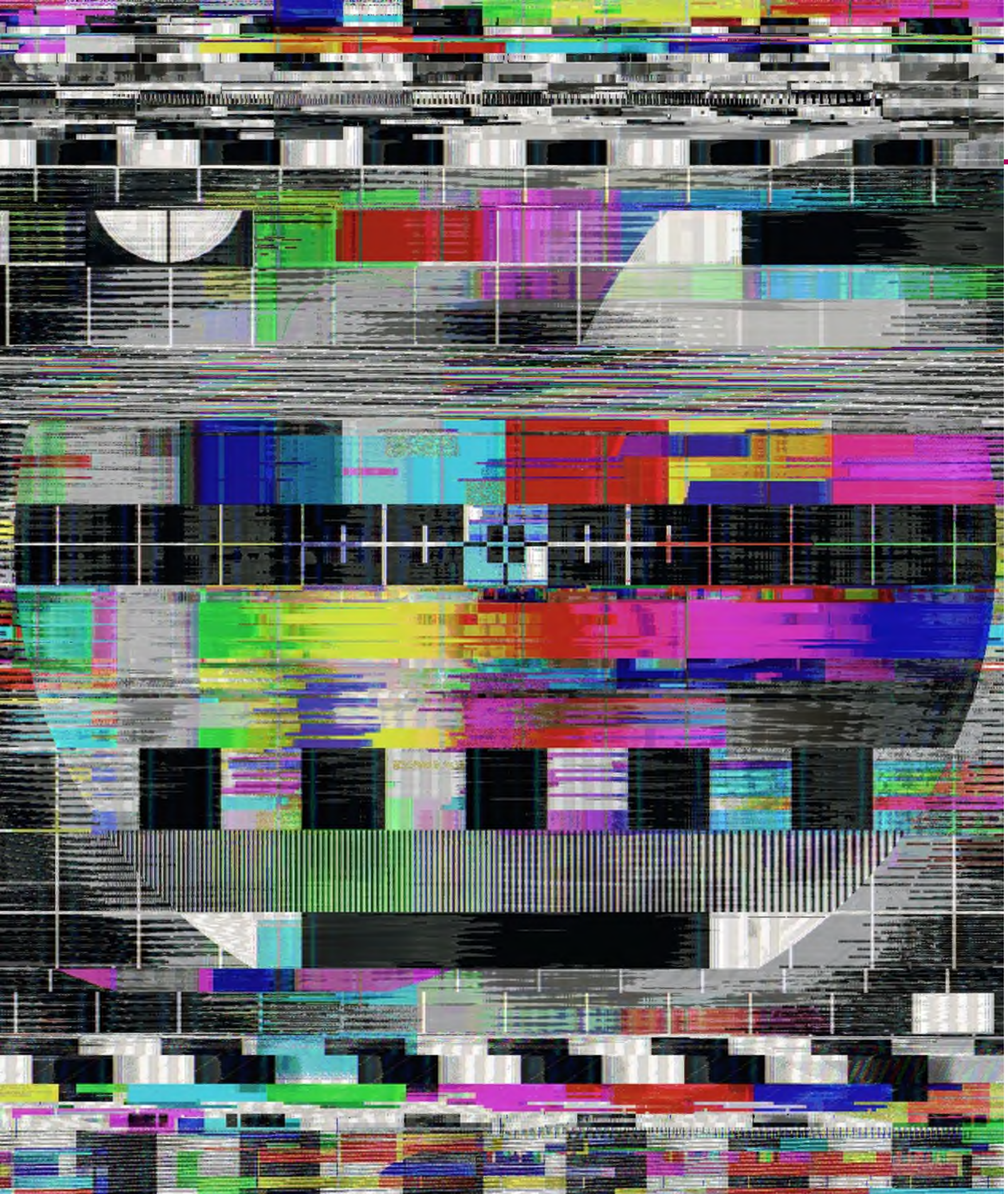


5 Attacks on your reputation: managing misinformation

False information spreading online is nothing new, but its sophistication and reach, along with AI-enabled deepfakes, pose greater challenges than ever. Despite legislative efforts to create a safer digital environment, misinformation (broadly, false information with unknown motives) and disinformation (deliberately false information) remain areas of concern. Recent decisions by some social media platforms to remove or reduce fact-checking measures may complicate matters further.

Businesses across all sectors may find themselves in the crosshairs of mis/disinformation. Thinking ahead and planning how to respond is a valuable exercise.

When faced with mis/disinformation, the first key decision will be whether to respond at all. Responding, especially through forceful legal correspondence, might backfire, resulting in the “Streisand effect” (inadvertently amplifying public awareness of the false information while trying to correct or suppress it).

A second key challenge will be to establish how much, if any, of the story is accurate – often real and fake elements are intertwined in such stories. Denying a story which turns out to have some truth to it can seriously damage your credibility. Consider appointing an internal team to dissect and validate these stories.

Third, deciding how to respond (if at all) is critical. Despite seeming counter-intuitive, experience shows us that countering disinformation solely with accurate information is unlikely, on its own, to be enough.

5 Attacks on your reputation: managing misinformation

Mis/disinformation frequently arises at "fault lines": areas already fraught with distrust such as food safety, climate change and technology. Lengthy written responses are unlikely either to restore trust or capture broad engagement. Better techniques may include the use of engaging videos and snappy messages, which address the false information boldly and concisely, directing audiences to further details as needed.

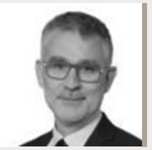
Finally, with increasing regulatory oversight over digital platforms in the UK and EU, sponsors and portfolio companies should stay informed about legislative measures aimed at countering unlawful and otherwise harmful content. These regimes often require platforms to have reporting processes and other content moderation measures in place. For example, under EU legislation, platforms must provide clear information on how they moderate content, as well as notice mechanisms for users to flag content that they consider to be illegal. Proactively understanding these regulations can guide businesses on compliance and active measures that they can utilise during a mis/disinformation crisis.

As with any plan, prevention is better than cure. A person is less likely to believe a story that goes against their preconceived image of you. Engaging with your wider stakeholders on an ongoing basis to build up your bank of trust is more important than ever. With this in mind, do not forget the power of a well-motivated and well-briefed workforce – both before or during a crisis. They can be your best ambassadors.

Issues for you to consider

- Do your crisis plans include social media account log-ins, a list of "knowledge gatekeepers" and the process for escalating when key people are out of the office?
- Are you able to produce a tiered communication plan: from the short, image-based, for example an infographic, to the longer fact-led rebuttal, quickly? Who needs to be involved?
- How quickly can you update your website? To manage the story, you may want "posts" or other communications to lead to your website for more information.
- Are you doing enough to build trust with fund investors and wider stakeholders, including employees? The more "social capital" you have in the bank, the less likely harmful disinformation is to be believed.

Contacts



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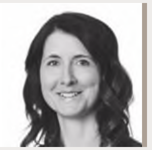

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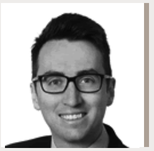

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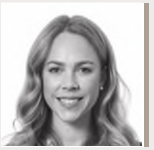

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6 New fraud offence: how to be reasonable

From September 2025, any "large organisation" – regardless of where it is incorporated – can face criminal liability in the UK if a person associated with it commits a fraud intended to benefit the business or its clients. The good news is that there is a defence if the business has implemented "reasonable" fraud-prevention procedures. What extra procedures should sponsors and portfolio companies put in place to protect themselves from potential liability?

What is the new offence?

The new offence is broadly drawn and does not apply solely to UK companies (see further below). It imposes criminal liability on an organisation if a fraud is committed for its benefit by associated persons (including employees, subsidiary undertakings and any person performing services for or on the company's behalf).

The offence does not apply if the company is a victim of fraud, but it will apply if the fraud is intended to benefit the company or anyone to whom services are provided by the associate on its behalf (such as a customer or client).

A defence will be available if the company can demonstrate that "reasonable procedures" were in place to prevent the fraud.

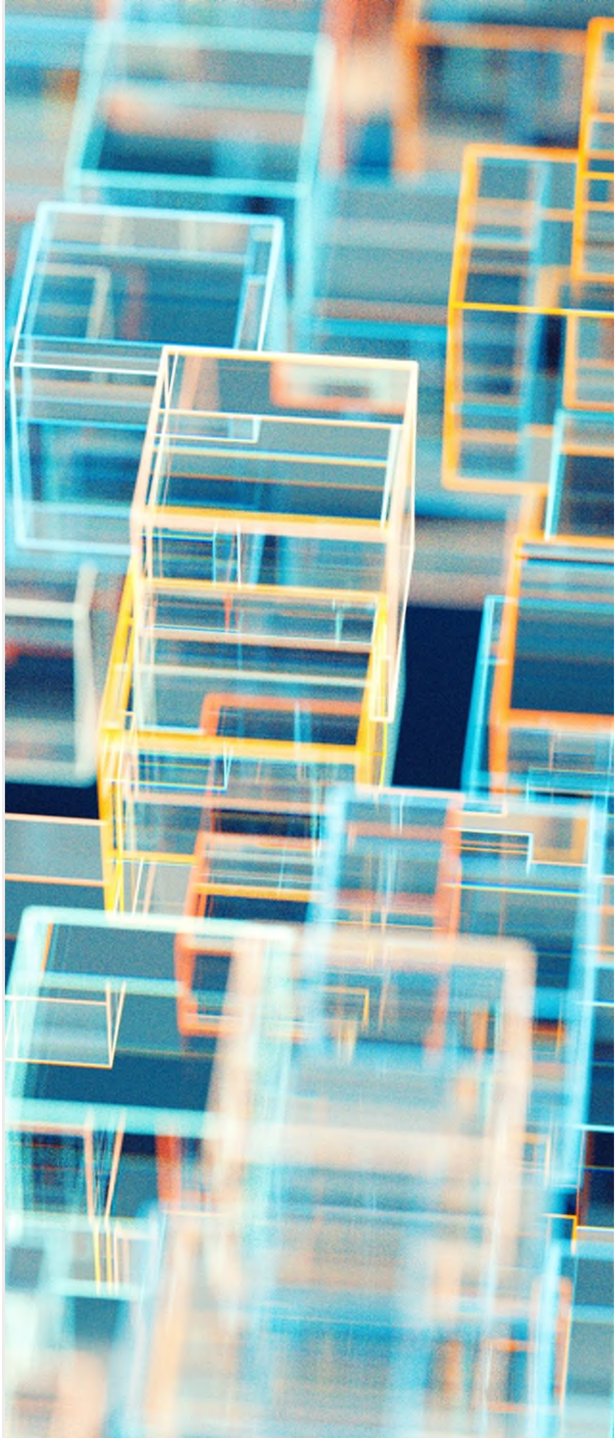
This means that directors of in-scope organisations should consider putting in place fraud prevention measures for the company's protection.

What are reasonable procedures?

UK government guidance on reasonable fraud prevention measures for these purposes sets out six principles that should inform the company's procedures. These are: top level commitment, risk assessment, proportionality, due diligence, communication (including training), and monitoring and review.

These principles are intended to give flexibility, allowing for the variety of circumstances that companies find themselves in.

In practice, in most cases reasonable fraud prevention procedures are likely to include the use of risk-based due diligence, ongoing training on anti-fraud best practices, senior management endorsing the anti-fraud policy at both sponsor and portfolio levels, and regular testing and review of the company's fraud prevention procedures.



6 New fraud offence: how to be reasonable

As with most risk-based policies and procedures, sponsors and portfolio companies should exercise a tailored and proportionate approach to their anti-fraud policies and procedures that are commensurate with the risks identified in the company's risk assessment.

A starting point is to identify the company's potential exposure to UK fraud-related risks by its associated persons by looking at, among other things:

> What are the company's main categories of associated persons?

> What opportunities exist for committing fraud? and

> Any incentives/pressure (motives for committing a fraud) and rationalisation (justifications for committing a fraud).

There is no need to duplicate existing fraud prevention measures but further work may be needed.

For example, companies that apply the UK Corporate Governance Code may already have processes that address some fraud risks related to the new offence, but merely complying with the Code is unlikely to suffice as a 'reasonable procedures' defence. If undertaking an acquisition, sponsors will want to ensure that the target's anti-fraud policies and procedures are properly reviewed.

Sponsors should also assess the anti-fraud culture at both sponsor and portfolio levels. To set the tone from the top, consider:

> Is there a culture where fraud is never accepted?

> What resources have been/can be allocated to anti-fraud training and fraud prevention measures? and

> Have anti-fraud policies and procedures been endorsed by senior management?

Which businesses are caught?

Organisations can be caught by the offence wherever they are incorporated but only if they are of a certain size.

Organisations will be in scope for the new offence if they meet at least two of the following in the preceding financial year:

£36m+ turnover

£18m+ total assets

250+ employees

What is fraud?

"Fraud" under this legislation includes:

> false accounting,

> false statements by company directors,

> fraudulent trading,

> cheating the public revenue, and

> Fraud Act offences (fraud by false representation, fraud by abuse of position, fraud by failing to disclose information, and obtaining services dishonestly).

The government guidance warns that fraud may arise in a wide range of circumstances and sets out some useful examples. These include cases involving the environment and "greenwashing", where consumers are deliberately misled by business claims and advertising.

6 New fraud offence: how to be reasonable

Five points to help guide your oversight of internal anti-fraud procedures

> Is your company a “large organisation”?

> What are the company’s categories of associated persons, and how have you satisfied yourselves that the company’s potential exposure to UK fraud risks by its associated persons have been adequately identified?

> How satisfied are you that your fraud prevention frameworks have been informed by the six principles: top level commitment, risk assessment, proportionality, due diligence, communication (including training), and monitoring and review? What about your portfolio companies?

> Do existing policies and procedures sufficiently address fraud risks related to the new offence?

> How satisfied are you that a culture of integrity, where fraud is never acceptable, exists at both sponsor and portfolio levels?

Key resources

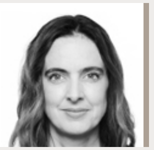
> Linklaters briefing: Nine months and counting

> Government guidance (November 2024)

> Economic Crime and Corporate Transparency Act

> Linklaters Economic Crime and Corporate Transparency Hub

Contacts



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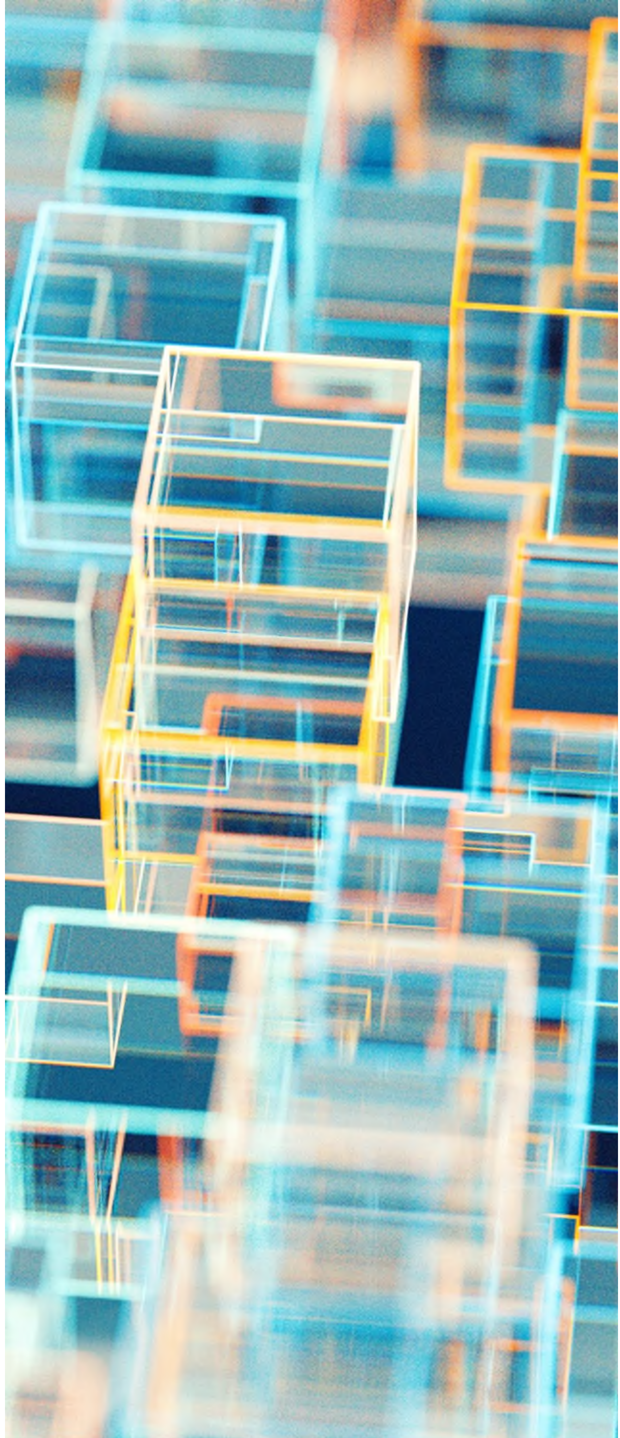
**as of 1 May 2025*



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