

Insights

START PREPARING FOR LONG TERM CHANGES TO CORPORATE CRIMINAL LIABILITY

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SUMMARY

Recent developments in the UK have increased the likelihood that the English common law corporate criminal liability regime will change significantly, even if not in the near future. Companies should take action now to prevent possible financial and reputational pain later.

In the UK, with a few exceptions, corporates typically incur criminal liability on the basis of the “identification principle”. That is, that the acts and state of mind of those who represent the “directing mind and will” of the corporate are attributed to the corporate itself, thereby bringing it liability.

Reviews into the efficacy of this regime have been ongoing since 2017, with little progress being made in overhauling it. It is seen as unsuitable in meeting its objectives, which are to bring liability to corporates for economic crimes. It faces difficulty because the size and structure of corporates make it difficult to ascertain whether the “directing mind and will” can be attributed to them.

Some of the most recent proposals will cause alarm to some as being disproportionately onerous. We believe that a more attractive and effective regime would take the form of quasi-strict liability for economic crimes (the precise definition of which is yet to be determined) modelled on the “failure to prevent” offences, and buttressed by a defence of adequate procedures.

Mukul Chawla QC, Sarah Klein, Naomi Miles and Joseph Ninan wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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MEET THE TEAM



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