

Corporate Liability for Economic Crime

Question 1 – The need for reform

Do you consider the *identification doctrine* inhibits holding companies to account for economic crimes committed in their name or on their behalf?

- Yes on occasion, but reform is not needed.
- Yes and reform is needed.
- No.
- Other Comments – Please specify below.

Question 2 – Amendments to the *identification principle*

The suggestion that the common law rules are the main difficulty faced by prosecutors when seeking to hold large companies to account for economic crime, leads to the question is it desirable to legislate to amend the common law rules. Legislation could, for example, amend the identification doctrine to broaden who is the directing mind of a company.

There is concern that such an amendment would encourage corporates to limit potential liability through the adoption of evasive internal structures.

Do you think that legislation could amend the *identification principle* so as to make it more effective?

- Yes.
- No.
- Please provide reasons for your answer.

Question 3 – The Bribery Act Model of 'failure to prevent'

Under s.7 Bribery Act 2010, if an employee or agent of a company uses bribery for a business purpose the company is guilty, not of the substantive bribery offence but of the offence of *failing to prevent* the bribery. The prosecution does not have to secure a conviction of a substantive bribery offence to prosecute under s.7, but it does have to prove to the criminal standard that the offence was committed. If a defendant company had in place procedures that, if followed, are adequate to prevent persons associated with it from committing bribery, it is entitled to a full defence.

If it is decided that law reform is necessary, do you believe that there is a case for introducing a corporate *failure to prevent* economic crime offence based on s.7 of the Bribery Act model?

- Yes.
- No.
- Please provide reasons for your answer

Question 4 – Strict (vicarious) liability

The creation of a strict liability offence based on the principles of vicarious liability would make the company guilty, through the actions of its employees, representatives or agents, of the substantive offence, without the need to prove any fault element such as knowledge or complicity at the corporate centre.

The principles of vicarious liability are well established in civil law. The United States adopts vicarious liability into their corporate criminal law.

Do you consider that vicarious liability is appropriate for the criminal law?

- Yes, in some circumstances, but not for economic crimes committed by company staff or agents.
- Yes, it is suitable for economic crime, but only that which is committed by staff or employees under direct control of a company.
 - Yes, it is suitable for economic crime committed through the actions of its employees, representatives or agents.
- No.
- Other Comments

Question 5 – Strict (direct) liability offence

A strict direct corporate liability offence would focus on the responsibility of a company to make sure that offences are not committed in its name or on its behalf. A company would be convicted without the need for proof of any fault element, not of the substantive offence as with vicarious liability, but of a separate offence akin to a breach of a statutory duty to ensure that economic crime is not used in its name or on its behalf.

Tick all that you agree with:

- By focussing on a failure to exercise supervision over the conduct of those pursuing a company's business objectives, this model may accurately target the real nature of corporate culpability.
- A strict liability offence will not lead to good governance.
- It is not right to introduce a direct strict liability offence. There should be a guilty mind requirement as there is with most other offending.
- Strict liability should mean strict and there should be no defence.
- Strict liability offences must have a defence. A due diligence type defence should be adopted.

Question 6 – Regulatory reform

There has been significant reform in the regulation of the financial services industry focused on deterring misconduct through strengthening individual accountability, particularly at senior manager level.

Tick all statements with which you agree:

- Big business ignores the criminal law and regulatory reform will be insufficient to deal with corporate crime.
- The fear of criminal sanctions are a deterrent to businesses choosing to set up or operate from the UK.
- It is good for the economy to have robust criminal laws to deal with corporate crime.
- It is only through regulators working with corporations that companies will learn not to offend and adopt good governance.

Question 7 – Corporate versus individual

Do you consider that the introduction of a new corporate offence could have an impact on individual accountability?

- Yes No

If yes, which of the following factors do you think are relevant.

- The size of the organisation.
- The location of senior management if it is different to the location of the offending.
- The seniority of the role of the individual.
 - The length of time the individual has been working with the company.
- Other comments – please specify.

If you have any further comments on the form or content of the draft guidance, please enter them here.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	

Company name/organisation (if applicable):	
Business sector	
Regions in which you operate	
Address	
Postcode	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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Thank you for taking the time to share your views.