Economic Crime and Corporate Transparency Act 2023 (ECCTA)

Corporate Criminal Liability

ECCTA has significantly changed the basis on which criminal liability can be attributed to a company in relation to certain economic crimes. It has lowered the threshold for holding companies to account criminally.

Historically, companies could only be criminally liable if the illegal conduct could be attributed to those who represented the "directing mind and will" of the company.

Since December 2023, in relation to certain economic crimes, the test has now changed to whether the misconduct can be attributable to a "senior manager" of the company. The intention behind this change is to make it easier to hold companies criminally liable.

A "senior manager" for these purposes is defined as an individual who plays a significant role in:

- the making of decisions about how the whole or a substantial part of the activities of the company or partnership are to be managed or organised; or
- the actual managing or organising of the whole or a substantial part of those activities.

The revised test currently only applies to offences which are listed in Schedule 12 of ECCTA, which include (in England and Wales):

- Bribery Act 2010 offences including those of bribing another person, being bribed and bribery of a foreign public official;
- money laundering offences under the Proceeds of Crime Act 2002 including the principal money laundering offences and the tipping off offence;
- Fraud Act 2006 offences including fraud and obtaining services dishonestly;
- cheating the public revenue;
- conspiracy to defraud;
- Theft Act offences including theft, false accounting and false statements by company directors;
- various offences under the Customs and Excise Management Act 1979;
- Financial Services and Markets Act 2000 offences including the prohibition on dealing in transferable securities without an approved prospectus and restrictions on financial promotion;
- Terrorism Act offences including fund-raising and money laundering;
- fraudulent trading; and
- Financial Services Act 2012 offences including misleading statements.

The Crime and Policing Bill 2024-25 currently contains a provision which would expand the new corporate liability test to all criminal offences. The provisions of the Bill may change as it makes its way through Parliament. We will provide updates.

Contact details

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