



## CORPORATE BITESIZE

### ECCTA - THE EXPANSION OF THE IDENTIFICATION DOCTRINE

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) has been in place for just over a year now and sections will continue to come into force over the next couple of years. We will produce a series of briefings to summarise what you need to know.

## What is the identification doctrine?

The identification doctrine is the means by which an organisation can be found criminally liable for the actions of an individual.

## Why was it changed?

Historically an organisation could be liable for the actions of an individual who was found to represent the organisation's "directing mind and will" or an "embodiment of the company". Prosecutions had to prove that individuals at the top of the organisation's management had committed the offence but this was difficult particularly in large multinational organisations where decision making might involve committees, managers or the board of directors.

## What has changed?

The ECCTA has created a statutory offence and expanded the scope of the identification doctrine. Now UK organisations can be guilty of an offence committed by a "senior manager" of the entity, acting within the "actual or apparent scope of their authority".

## What is a senior manager?

A senior manager is someone who plays a significant role in either:

- the decision making about how the whole or a substantial part of the organisation's activities are managed or organised; or
- the actual managing or organising of the whole or substantial part of those activities.

This covers both those in the direct chain of management as well as those in strategic or regulatory compliance roles. The test focuses on the practical realities of the individual's role rather than the title/position to which they are appointed.

## What does "acting within the actual or apparent scope of their authority" mean?

The individual must have acted within the scope of their job. They do not need to have been authorised to do the act. For example, if the organisation's UK sales manager bribes officials in order to obtain contracts then this could be considered acting within the actual or apparent scope of the role of the sales manager.

## What offences does this apply to?

Currently the legislation applies to a list of economic crimes set out in Schedule 12 to the ECCTA. These include bribery, tax evasion, false accounting, money laundering, fraud, breaches of sanctions regulations as well as aiding, abetting, counselling or procuring the commission of a listed offence. There was an intention to expand the list to all criminal offences with a Criminal Justice Bill but this was dropped when the new Labour government came into power.

## When did this come into force?

The identification doctrine was expanded and came into force on 26 December 2023.

## What are the penalties?

An organisation prosecuted of an offence under this section is at risk of a criminal conviction, an unlimited fine, prohibition from being awarded public contracts and reputational damage.

## What should I do to try to protect my organisation?

Identify those individuals who could potentially be accountable under the new legislation. Check if those people could benefit from additional training or policies to aid accountability. Review and update all relevant policies and codes of conduct including policies on bribery, money laundering, fraud,

tax evasion etc and communicate internally. Understand local law regarding economic crime as, if the individual is found to be guilty of say a bribery offence in another country, the UK organisation is at risk of prosecution as well. Implement or review onboarding training for senior managers including induction packs and processes and inclusion in regular related training.

It may be that organisations will want to check who is covered by their insurance policies and widen the scope to cover all "senior managers".

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