

# A Game-Changer for UK Corporate Crime Enforcement? Major Expansion of Corporate Criminal Liability Proposed

16 June 2023

Yesterday, the UK government announced a groundbreaking proposal to reform the identification doctrine—the principle used to hold a company liable for criminal offences committed by those who represent its “directing mind and will”.<sup>1</sup>

For a wide range of offences, including bribery, money laundering, sanctions, fraud and false accounting offences, the actions of a “*senior manager... acting within the actual or apparent scope of their authority*” will be attributable to his or her employer. The draft wording was added to the Economic Crime and Corporate Transparency Bill, which, as part of the government’s focus on overhauling UK economic crime legislation, already includes a new failure to prevent fraud corporate offence.<sup>2</sup>

The “directing mind and will” of a company has generally been interpreted as comprising the most senior company executives, i.e. those at or close to board level. The current position has been criticised in recent years following a number of high-profile cases, such as the failed prosecution of Barclays for conspiracy to commit fraud, in which the Serious Fraud Office was unable to establish that even top-level executives such as the former CEO represented the company’s directing mind and will.

Under the new proposal, any “senior manager” will be considered a company’s “directing mind and will”. A senior manager is defined as:

“...an individual who plays a significant role in—  
(a) the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership are to be managed or organised,  
or  
(b) the actual managing or organising of the whole or a substantial part of those activities.”

---

<sup>1</sup> <https://www.gov.uk/government/news/more-action-to-fight-fraud-bribery-and-other-economic-crime>

<sup>2</sup> <https://www.debevoise.com/insights/publications/2023/05/uk-introduces-new-failure-to-prevent-fraud>

It will be crucial to see how a “significant role” is interpreted and what the threshold will be for assessing what represents a “substantial part” of the company’s business. For example, would someone in a global head of sales position qualify? We do not know whether the government will issue some guidance on these provisions or leave this to the courts to determine. Unlike the Financial Conduct Authority’s strictly defined senior managers regime, which is prescriptive as to who qualifies as a senior manager, the definition of a senior manager under the proposed amendment to the identification doctrine is more fluid: the UK government’s announcement makes it clear that the focus of the assessment will be on the decision-making power of the senior manager in question “rather than just their job title”. The stated aim is to “reduce the ability for corporations to use complex management structures to conceal who decision makers are and therefore level the playing field for businesses of all sizes”.

This is the most significant change to the law of corporate criminal liability since the directing mind and will principle was established in a House of Lords decision over 50 years ago. Its logical consequence, once enacted, will be to make corporate prosecutions for economic crimes (such as the substantive bribery offences in the Bribery Act 2010) considerably easier than is currently the case.



**Karolos Seeger**  
Partner, London  
+ 44 20 7786 9042  
kseeger@debevoise.com



**Konstantin Bureiko**  
International Counsel, London  
+ 44 20 7786 5484  
kbureiko@debevoise.com



**Aisling Cowell**  
Associate, London  
+ 44 20 7786 9032  
acowell@debevoise.com



**Andrew Lee**  
Associate, London  
+ 44 20 7786 9183  
ahwlee@debevoise.com