

# Protect your SME from corporate criminal liability

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**The law treats corporations as separate legal entities, but to what extent can your employees' actions result in your business being found criminally liable?**

In June 2022, the UK Law Commission reviewed [corporate criminal liability](#) law. Find out how proposed changes to the legislation could get your company into a pickle!

It is easier to hold smaller companies accountable for wrongdoings than multi-million-dollar companies. However, the bigger a company gets, the harder it is to identify individuals responsible for criminal acts. The review aims to ensure fair treatment between organisations of different shapes and sizes. But will it achieve this?

The general rule for corporate criminal liability is the 'identification doctrine'. Identification doctrine means that a company will generally only be held liable for the conduct of a person with the status and authority to constitute the company's "directing mind and will". In short, those persons with oversight and control of operations. So, for example, the directors of small businesses are likely to have oversight and control over all operations and therefore be the ones identifiable as the directing mind and will. In contrast, in large companies, the decision-making powers are diffused. Because of this, the UK Law Commission's review is considering reforming the doctrine.

The Commission is also considering whether to introduce a new offence of "failure to prevent" certain criminal acts (e.g., fraud) by an employee or agent. By way of illustration, as things currently stand, a company employee could commit criminal acts to benefit the company. The company could escape liability by arguing that the employee in question is not 'senior' enough to be

the directing mind and will. In this scenario, the company would benefit from the criminal act in question but escape liability. However, by introducing an offence of failing to prevent, companies will not escape liability unless they can demonstrate that they have established appropriate policies and procedures to prevent such criminal acts from being carried out in the company's name.

The costs of introducing new procedures, policies, and training to ensure compliance with the Commission's proposed changes may be high. Small businesses may need help to meet these, especially post-pandemic and especially considering recent economic forecasts. The key for any business is to understand the proposed changes and ensure that appropriate and proportionate measures are taken, considering the business's sector, size and risk exposure.

**Ensure you have the right policies and procedures in place to help protect your SME from corporate criminal liability. Contact corporate lawyer [Evangelos Kyveris](#) today.**

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