



CORE Submission to the Treasury Select Committee Economic Crime Inquiry

CORE is the UK civil society coalition on corporate accountability. We aim to advance the protection of human rights with regards to UK companies' global operations by promoting: higher standards of conduct; compliance with the law as part of a more effective regulatory framework; and improved access to remedy for people harmed by UK-linked business activities. We welcome this inquiry and the opportunity to submit evidence.

While we understand that the inquiry is concerned specifically with the anti-money laundering and sanctions regime, and economic crime affecting consumers, we believe it also presents an important opportunity to raise with Government the following wider issues.

Strengthening the Legal Framework to Tackle Economic Crime

1. As we pointed out during briefings to inform debates on the Criminal Finances bill, the UK lags significantly behind other major financial centres in prosecuting corporate wrongdoing. Not a single UK financial institution has faced criminal charges as a result of the 2008 financial crisis. The Serious Fraud Office (SFO) brought no charges against organisations linked to the LIBOR / EURIBOR affair, while U.S authorities charged the corporations involved. The SFO was forced to drop charges against Olympus after the Court of Appeal found that under current laws, it is not illegal for companies to mislead their auditors.¹

2. The Bribery Act 2010 introduced the 'failure to prevent' model for corporate offending, creating a corporate offence of failure to prevent bribery. The Government has recognised that the 'failure to prevent' model is a robust, effective and world-leading model for corporate liability. The model makes it easier to prosecute corporate wrongdoing and therefore incentivises greater self-reporting and attention to corporate compliance. Introducing a failure to prevent offence for all economic crime would also help create consistency in the legal framework for tackling economic crime. Under the Criminal Finances Act, this model was extended with the creation of the failure to prevent tax evasion offence. However, given that bribery and tax evasion usually involve an element of other economic crimes, specifically money laundering and often fraud, it is nonsensical to have different models of corporate liability operating for different economic crimes.

¹ http://corporate-responsibility.org/wp-content/uploads/2017/02/170217_CrimFinancesBill_Report-briefing_FINAL.pdf

3. As such, we recommend that Government bring forward draft legislation for consultation to introduce an offence of 'failure to economic crime', via an extension of the 'failure to prevent tax evasion' offence introduced in the Criminal Finances Act.

Monitoring and Enforcement

4. The Government should establish a central database of companies that have faced criminal sanction, regulatory sanction or are under investigation. This will assist public contracting authorities to establish companies' suitability to deliver taxpayer-funded contracts for the provision of public sector infrastructure, goods and services.

5. HMRC should introduce a transparent publication strategy in relation to enforcement actions taken against companies.

The Identification Doctrine and the Need for Corporate Liability Reform

6. The UK legal framework for corporate liability is ill-equipped for the effective enforcement of the criminal law against large modern companies and requires urgent reform. The identification doctrine, which holds that a senior individual must be shown to be complicit in the crime for a company to be considered guilty of a serious offence, is a major hurdle to prosecutions. This doctrine has been widely criticised. The Law Commission has stated that it 'can make it impossibly difficult for prosecutors to find some companies guilty of serious crimes, especially large companies with devolved business structures.' Former head of the SFO David Green commented, 'In a world of increasingly complex corporate structures, the identification principle can hobble the prosecutor in those cases where it is right to prosecute the company.' Indeed, the Government's own consultation on the failure to prevent tax evasion offence noted that the 'cumulative effect [of the identification doctrine] is an environment that does not foster corporate monitoring and self-reporting of criminal activity.'²

7. In January 2017, the Ministry of Justice ran a call for evidence on 'Corporate Liability for Economic Crime', concerned with: criminal offences designed to punish and prevent economic crimes; the extent to which the identification doctrine is deficient as a tool for effective enforcement of the criminal law against large modern companies; and the options for reform of the law. The deadline for submissions was 31st March 2017. Government consultation principles state that Government must respond 'within 12 weeks of the consultation or provide an explanation why this is not possible'. Despite this, the Government has still not published its response, and has recently refused requests to indicate when it will be published or to give any explanation for the delay.³

² See https://issuu.com/transparencyuk/docs/ti-uk_submission_-_corporate_liabil, pp. 3-4

³ On 8th February 2018 Helen Goodman MP asked the secretary of state for justice on what date he plans to publish the outcome of the call for evidence and on 6th March 2018 Anneliese Dodds MP asked the Economic Secretary to the Treasury to reveal the outcome of the call for evidence, its main findings and how the

8. We therefore recommend that during the course of the inquiry, the Committee asks Government:

- i. when it intends to publish its response to the call for evidence on economic crime;**
- ii. whether it has any plans to task the Law Commission with reviewing the overall corporate liability framework in the UK. We recommend that this be treated as a priority, to ensure consistency across all criminal offending.**

ENDS

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Government has decided to act on them. In both instances the Government failed indicate when it will respond to the call for evidence or explain why no response has been issued.