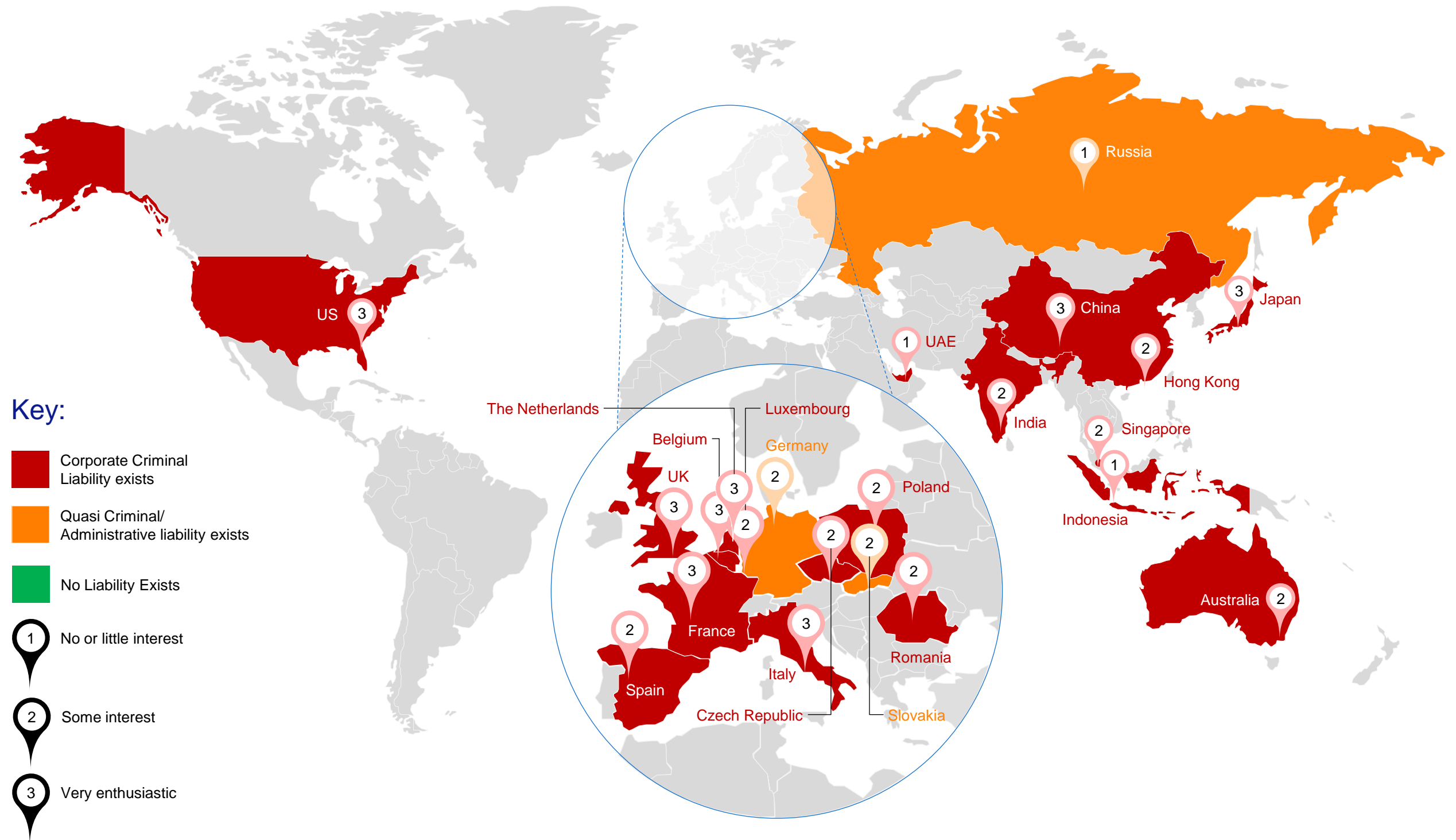


Corporate Criminal Liability

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To accompany our recently published [Corporate Criminal Liability report](#) we have drawn together some of the high level trends. We have ranked the various jurisdictions on the basis of whether or not corporate criminal liability exists and the enforcement enthusiasm of the authorities.



Source: Clifford Chance reviewed the corporate criminal liability landscape in 22 major markets and ranked them according to their level of corporate criminal liability and their enthusiasm for enforcing it.

Australia: An Australian corporation may be subject to investigation and prosecution by a range of different authorities, each operating pursuant to distinct statutory regimes, as a result of which the landscape of corporate criminal liability is fragmentary and constantly changing. Although the trend is still to pursue individuals rather than corporates, there are current high profile corporate investigations such as the investigations by the Australian Federal Police and the Australian Securities and Investments Commission into allegations of foreign bribery involving Leighton Holdings Limited.

China: While corporate criminal liability is a longstanding concept under PRC law, the high criminal fines being imposed on corporations is a newer phenomenon. The distinction between corporate and individual liability is blurred so that companies need to have strong corporate governance policies to avoid this risk.

Hong Kong: Whilst corporates may be held criminally liable for most offences, the Hong Kong authorities tend to target individuals for criminal prosecution, whereas corporates will face greater regulatory enforcement action. Unlike in some other jurisdictions, there is no specific statutory offence of corporate manslaughter which meant that following the ferry disaster in October 2012 when 39 people died, although the two vessels' captains were prosecuted, their respective employers were not, but were instead fined for criminal breaches of marine safety rules.

India: Corporate criminal liability is a relatively new concept in Indian law (established by a Supreme Court decision in 2005). The Supreme Court has recently confirmed that a corporate is in virtually the same position as an individual in terms of prosecution and can be convicted for most common law and statutory offences. Nevertheless criminal enforcement remains focussed on individuals, although there is a growing emphasis on good corporate governance under the Companies Act.

Indonesia: Currently under the Indonesian criminal code only individuals can be prosecuted although corporate criminal liability exists for certain specific offences including bribery and money laundering. Despite this, law enforcement agencies have been reluctant to bring charges against corporate entities and instead focus their efforts on bringing charges against culpable individuals. There is currently a draft bill before Parliament to amend the code to establish corporate criminal liability more broadly.

Japan: Corporates can only incur criminal liability pursuant to specific statutory language expressly imposing such liability and where a director, officer or employee has been found to have committed the offence in question in connection with the corporate entity's activities or assets. The trend is increasingly high maximum fines to be set out in legislation for corporates. Criminal prosecution is now seen as a real risk by the vast majority of corporate entities in Japan. In July 2013 Olympus, one of Japan's most well known corporates, was convicted of submitting false statements in its annual securities filings.

Singapore: Corporate criminal liability operates in a similar way to the UK. Financial institutions are subject to increasing scrutiny in Singapore. Legislation is being amended to create new offences and sanctions created relating to the manipulation or attempted manipulation of financial benchmarks.

Belgium: Since the adoption of legislation in 1999 enabling corporate entities to be prosecuted a significant number of corporate entities have faced criminal investigations and/or prosecutions and public prosecutors have enthusiastically used their powers to prosecute. Criminal prosecution is now seen as a real risk by the vast majority of corporate entities in Belgium.

Czech Republic: In 2012 legislation was introduced enabling the prosecution of corporates as part of the Czech government's anti-corruption strategy and its international commitments. Since its enactment, there have been approximately 30 convictions and some severe sentences imposed – including dissolution and, in another case, prohibition of business activities for a period of 10 years. Also in 2012 DPAs were introduced although have not been used with any great frequency so far. As DPAs become a greater feature of the international prosecutorial landscape, it is likely that the use of DPAs for corporate offending in the Czech Republic will increase.

France: The principle of corporate criminal liability in France was introduced in 1994 since when the number of prosecutions and convictions of corporates has grown significantly, in particular more recently. The level of fines on corporates is also increasing. In December 2013 a new prosecutor's office was created dedicated to financial crime which has recently been very active in investigating corporate and financial institutions.

Germany: Currently corporates cannot be held criminally liable in Germany although whether German law should be amended to include criminal liability for corporate entities is the subject of increasing debate. There is a draft law on corporate criminal liability for the State of North Rhine-Westphalia due to be debated in the German Parliament in the near future.

Italy: Law 231 enables a corporate to be prosecuted if an offence has been committed for its benefit by an employee, even if that employee is not prosecuted. It is a defence for a corporate to show that it had adequate management and organisational control protocols for the prevention of the offence committed. Italy has seen a positive trend in this area with the number of prosecutions of corporates increasing.

One of the most high profile recent cases before the Italian Supreme Court related to the Thyssenkrupp fire in which seven employees died. The company was convicted for failing to implement adequate management and organisational control protocols for the prevention of the offence and fined 1 million Euros, banned from bidding for government contracts and from advertising products for six months. It had to disgorge profits of € 800.000,00 and publicise the sentence.

Luxembourg: Corporate criminal liability was only introduced into Luxembourg law in 2010 and is largely untested in practice. However, the Luxembourg legal community expects that public prosecutors will utilise the new law.

Poland: Corporate criminal liability was introduced in Poland in 2003. Unlike Italy, a corporate can only be held criminally liable after the person who committed the offence on its behalf has been convicted. It is a defence for a corporate to prove that due diligence was conducted in the hiring or supervision of the alleged offender. There has been a growing number of corporate prosecutions and recently the Polish anti-corruption authorities have indicated that they want to start taking tougher action against corporates including banning those guilty of corruption from taking part in public tenders.

Romania: Although corporate criminal liability is a relatively new concept in Romania, having only been introduced in 2006, the number of corporate prosecutions doubled in 2014. Most of the pending cases involve companies affiliated (directly or indirectly) to high ranking officials, ministers, politicians and influential business people. A corporate which self-reports an offence of bribery before an investigation has started can avoid prosecution altogether.

Slovakia: The Slovak Ministry of Justice published a bill on corporate criminal liability which is set to replace the currently applicable quasi-criminal liability regime for certain, mainly economic, criminal offences. The bill is currently in the legislative process, the proposed effective date is 1 July 2015.

Spain: Corporate criminal liability was introduced in Spain in 2010. New legislation is due to come into force in July 2015 which will provide a defence to a corporate if it can show that it has implemented a crime prevention or compliance programme.

The Netherlands: After years of steadily growing enforcement actions against corporates, the pace of the authorities in prosecuting and reaching substantive settlements with corporates has picked up dramatically over the last two years. The Prosecution Office has surrendered its last reserves to use its full power to reach unprecedented settlements with well known Dutch companies.

UK: Historically few prosecutions have been brought against corporates in the UK (other than small companies) given the legal challenges of having to establish culpability of a senior director. However, this is changing: recent legislation, including the Bribery Act 2010, has changed the basis of corporate criminal liability for certain offences; the Serious Fraud Office is specifically targeting corporates; and the UK Government is currently considering the case for a new offence of corporate failure to prevent economic crime and the rule on establishing corporate criminal liability more widely.

Russia: Currently corporates cannot be criminally liable in Russia but can be liable under the RF Administrative Offences Code if crimes are committed by their management or employees. The question of criminal liability for corporates is currently of great interest in Russia because the current "quasi-criminal" administrative liability has proved quite ineffective.

UAE: Whilst corporate criminal liability exists, it is regulatory sanctions which are most frequently imposed against authorised firms by the Dubai Financial Services Authority.

United States: The aggressive pursuit of corporates continues unabated in the US. US prosecutors, including the US Attorney General, have made repeated public statements that no entity or institution is "too big to jail". Furthermore, the Department of Justice recently emphasised that if a company wants full cooperation credit they need to secure for the government the evidence sufficient to prosecute individuals, including their senior most executives.