

# CORPORATE CRIMINAL LIABILITY

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# CORPORATE CRIMINAL LIABILITY

EMERGENCE, CONVERGENCE,  
AND RISK

Edited by  
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and  
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 Springer

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# Preface

This book is made up of the contributions of country experts and the general report on corporate criminal liability presented to the XVIIIth International Congress of Comparative Law held in Washington, DC, in the northern summer of 2010.

It was a wise decision of the organizers to invite contributions on this specific topic as it has virtually exploded over the last decade: nearly all international treaties on economic and organized crime insist on the creation of corporate criminal liability (or, if not criminal, then quasi-criminal or administrative liability). Traditional resistance to CCL in continental European and Latin American civil law jurisdictions is weakening rapidly. In parallel, common law countries are reconsidering their approaches to imputation, which seem, by turns, too strict or too restrictive. A common standard is emerging.

This preface gives me the opportunity to thank all contributors to this book as well as the team that made it possible: Nadia Barriga, Denise Berger, Marnie Dannacher, Raphaël Eckert, and Rebekka Gigon.

By far the largest contribution, though, has been made by my colleague, Radha Ivory. She has not only shared the writing to the general report, which now appears as the first chapter to this book, but she has edited all the English language texts and has had the overall responsibility for the book's production.

Last but not least, I would like to thank the publisher for its support.

Basel, October 2010

Mark Pieth



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# List of Abbreviations

AC	Appeal Cases
ACHR	American Convention on Human Rights
ACT	Australian Capital Territory
AfCHPR	African Charter on Human and Peoples' Rights
AfCommHPR	African Commission on Human and Peoples' Rights
aff'd	affirmed
AG	Aktiengesellschaft
al.	alinéa
ALI	American Law Institute
ALRC	Australian Law Reform Commission
APG	Asia/Pacific Group on Money Laundering
ARC	Act against Restraints on Competition
art(s).	article(s)
Assoc.	Association
ATF	Recueil officiel des arrêts du Tribunal fédéral suisse
AU	African Union
BGB	Bürgerliches Gesetzbuch
BGH	Bundesgerichtshof
BMS	Bristol Myers Squibb Corporation
BRIC	Brazil, the Russian Federation, India, the People's Republic of China
Bull.	Bulletin
BV	besloten vennootschap
BVerfG	Bundesverfassungsgericht
C. pén.	Code pénal
Cass. ass. plén.	Cour de Cassation, Assemblée plénière
Cass. ch. req.	Cour de Cassation, Chambre des Requêtes
Cass. civ.	Cour de Cassation, Chambre civile
Cass. crim.	Cour de Cassation, Chambre criminelle
CCL	corporate criminal liability
CCP	Code of Criminal Procedure
CCS	Code civil suisse

CEDH	Convention de sauvegardes des droits de l'homme et des libertés fondamentales
cert.	certificate
cf./cfr.	conferatur
Ch(s).	Chapter(s)
CHF	Swiss Francs (currency)
Chron.	Chronique
Cir.	Circuit
cl(l).	clause(s)
Cm	Command Papers of British Parliament
CMCH Act (UK)	Corporate Manslaughter and Corporate Homicide Act 2007 c. 19
COE	Council of Europe
coll.	collection
Com DP	Scottish Law Commission Discussion Paper
Comm.	Commission
coord(s).	coordinator(s)
Corp.	Corporation
CP	Code pénal
CPP	Code de procédure pénale suisse
CPS	Crown Prosecutions Service/Code pénal suisse
CPS Act	Criminal Procedure (Scotland) Act 1995 c. 46
CPSEW (UK)	Crown Prosecutions Service of England and Wales
Cr. App. R	Criminal Appeal Reports
Crim. L. R.	Criminal Law Review
Cst	constitution
d. lgs.	decreto legislativo
DCC	Dutch Civil Code
DCCP	Dutch Code of Criminal Procedure
DER	Derecho Comparado/El Derecho-Jurisprudencia General
Div.	Division
DOJ	Department of Justice
DPA	Deferred Prosecution Agreement/Droit pénal administratif
DPC	Dutch Penal Code
DSC	Dutch Supreme Court
e.g.	exempli gratia
EC	European Community(ies)
ECHR	European Convention on Human Rights
ECommHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
ed(s).	editor(s)
éd(s).	éditeur(s)
edn.	edition
édn.	édition

EOA	Economic Offenses Act
ER	English Reports
et al.	et alia
et seq.	et sequitur
etc.	et cetera
ETS	European Treaty Series
EU	European Union
EWCA Civ	Court of Appeal (Civil Division)
EWCA Crim	Court of Appeal (Criminal Division)
F. Supp.	Federal Supplement
Fasc.	Fascicle
FATF	Financial Action Task Force
Fed. Reg.	Federal Register
FF	Feuille fédérale
GA	Goldammer's Archiv für Strafrecht (Journal)
GmbH	Gesellschaft mit beschränkter Haftung
GOC	government-owned corporation
GRECO	Group of States against Corruption
H&S	Health & Safety
HC	House of Commons
HL	House of Lords
HRC	Human Rights Committee
Hrsg.	Herausgeber
HSE	Health and Safety Executive
HSW Act	Health and Safety at Work etc. Act 1974 c. 37
i.e.	id est
IACCommHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
ibid.	ibidem
ICCPR	International Covenant on Civil and Political Rights
ILM	International Legal Materials
Inc.	Incorporated
IPPF	International Penal and Penitentiary Foundation
JC	Justiciary Cases
JHA	Justice and Home Affairs
L.O.	Légal Observer
LCD	Loi contre la concurrence déloyale
LCEW (UK)	Law Commission of England and Wales
let.	lettre
LIFD	L'impôt fédéral direct
Ltd.	Limited
MENAFATF	Middle East and North Africa Financial Action Task Force
Mgmt.	Management
MNE	Multinational Enterprise

MP	Members of Parliament
MPC	Model Penal Code
n(n).	note(s)
N.Y.	New York
NGO	non-governmental organization
NJ	Nederlandse Jurisprudentie
NJW	Neue Juristische Wochenschrift
no(s).	number(s)
NPA	Non-Prosecution Agreement
NStZ	Neue Zeitschrift für Strafrecht
NSW	New South Wales (Australia)
NV	naamloze vennootschap (i.e. a public limited company)
OECD/OCSE	Organization for Economic Co-operation and Development
OJ	Official Journal of the European Union (Communities)
Ord(s).	Orders
OWiG	Ordnungswidrigkeitengesetz
ÖZDEP	Freedom and Democracy Party (registered political party)
Pacte ONU II	Pacte international des Nations Unies relatif aux droits civils et politiques
para(s).	paragraph(s)
pt(s).	part(s)
PUK	Partnerships United Kingdom
QB	Law Reports, Queen's Bench
reg.	regulation
Rép. Min.	Réponse ministérielle
Rev.sc.Crim.	Revue de Science Criminelle et de Droit Pénal Comparé
RJDA	Administrative Law Reports (Canada)/Recueil général de jurisprudence de droit administratif et du conseil d'état
ROA	Regulatory Offenses Act
RR	Revised Reports
RS	Rechtssache/Recueil systématique du droit fédéral
RSC	Revised Statutes Canada/Revue de Science Criminelle et de Droit Pénal Comparé
s(s).	section(s)
SA	Société Anonyme
SADC	Southern African Development Community
SCCR	Scottish Criminal Case Reports
Sch.	Schedule
SCR	Supreme Court Reports
SDNY	Southern District of New York
SI	Statutory Instruments
SLT	Scots Law Times
somm.	sommaire

Stat.	Statute
StGB	Strafgesetzbuch
sub nom.	sub nomine
UK	United Kingdom
UKHL	United Kingdom House of Lords
UN	United Nations
UNTS	United Nations Treaty Series
US	United States
USAM	United States Attorney's Manual
USC	United States Code
USDOJ	United States Department of Justice
USGAO	United States Government Accountability Office
USSC	United States Sentencing Commission
v.	versus
VBIBW	Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg)
VbVG	Verbandsverantwortlichkeitsgesetz
Vic.	Victoria
vol(s).	volume(s)
WGB	OECD Working Group on Bribery in International Business Transactions