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# Managing Fraud and Corruption Risk in the Corporate Criminal Liability Regime:

Overview of Reference Guidance on Adequate  
Preventive Procedures in the Indonesia  
Context

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## Background

Business integrity in Indonesia has entered a new era. Corporations can now be held criminally liable for offenses committed by their employees—including fraud, corruption, and other criminal acts. Under the revised Indonesian Criminal Code, effective 2 January 2026, corporations, along with their key executives and ultimate beneficiaries, may face legal accountability, significant sanctions, and, critically, reputational damage. This concept is known as Corporate Criminal Liability (“CCL”).

Until now, corporate criminal liability in Indonesia was largely confined to the public sector, particularly under

anti-corruption laws. Since 2017, law enforcement, guided by **Supreme Court Regulation No.13 of 2016**, could determine corporate guilt where a corporation:

1. Benefited from a crime,
2. Allowed a crime to occur, or
3. Failed to implement adequate preventive measures.

With the revised Criminal Code, this framework now extends to the private sector, affecting the broader business landscape and raising the stakes for all corporations operating in Indonesia.

Among these three criteria, the third—failure to implement adequate preventive measures—poses the greatest challenge. What qualifies as

“adequate”? How can corporations credibly demonstrate their preventive efforts? These are the critical questions executives must address to protect their businesses and organizations.

This document provides overview of reference guidance for corporations operating in Indonesia to navigate the new legal landscape, mitigate risks, and safeguard both their operations and reputation. Whether you are an Indonesian company or an international organization with local operations, the principles outlined here are essential for ensuring compliance and demonstrating accountability.

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## What Corporate Criminal Liability Means for Businesses in Indonesia

Starting 2 January 2026, Indonesia will formally implement the CCL regime under Law No.1 of 2023 on the Criminal Code (the “Criminal Code”). This marks a fundamental shift in how the Indonesian legal system views corporate accountability, integrity, and governance.

Historically, criminal liability in Indonesia primarily centered on individual wrongdoing. Under the new Criminal Code, however, corporations—along with their management and, in certain circumstances, their ultimate beneficiaries—may be held criminally responsible for offenses committed within the scope of corporate activities. This development significantly raises the stakes for businesses operating in Indonesia.

Beyond the risk of substantial financial penalties and operational sanctions, the CCL exposes companies to long-term reputational damage, disruption to operations, and loss of stakeholder trust—all of which can materially affect business sustainability. While the concept of corporate liability has been applied in public-sector corruption cases since 2017, the revised Criminal Code extends this framework across all sectors, including private and commercial enterprises.

### Who and What Falls Within the Scope of Corporate Criminal Liability

The Criminal Code adopts a broad definition of “corporation.” It includes legal entities such as limited liability companies, foundations, cooperatives, state-owned enterprises (BUMN), and regionally owned enterprises (BUMD), as well as entities deemed equivalent under applicable laws. It also covers associations—both incorporated and unincorporated—and business entities such as partnerships and limited partnerships (*commanditaire vennootschap*).

Corporate crimes are defined as criminal acts committed:

- ▶ By individuals who hold functional positions within the corporate structure, or
- ▶ By person(s) acting based on employment relationships or other relationships, where such acts are carried out for and on behalf of the corporation or in its interests, and within the scope of the corporation’s business or activities, whether conducted individually or collectively.

This formulation makes clear that liability is not limited to formal directors or commissioners only. It may also extend to senior management, key decision-makers, and other individuals whose actions effectively represent corporate intent or benefit for the corporation.

### When Can a Corporation Be Held Criminally Liable?

Article 48 of the Criminal Code sets out circumstances under which a corporation may be held criminally responsible. These include situations where:

1. The conduct falls within the corporation’s business activities as stated in its articles of association or other governing documents;
2. The conduct unlawfully benefits the corporation;
3. The conduct is accepted as corporate policy;
4. The corporation fails to take necessary steps to prevent the offense, mitigate its impact, or ensure compliance with applicable laws to avoid a crime from happening; and/or
5. The corporation allows the crime to occur.

The article indicates important aspects to note that these criteria shift the legal focus from isolated misconduct to the quality of corporate governance, internal controls, and compliance culture.

### Corporate Criminal Liability and the Business Judgment Rule: A Converging Narrative

Recent Indonesian court decisions involving the Business Judgment Rule (“BJR”) provide valuable context for understanding how CCL may be applied in practice. In several cases, courts have recognized that directors and commissioners should not be criminally liable for business decisions made in good faith, with due care, and within their authority—even when those decisions later result in losses.

These cases reinforce a critical principle: criminal liability should not arise merely from poor outcomes, but from failures in process, integrity, and oversight. This principle resonates strongly with the CCL framework, where liability increasingly turns on whether the corporation has taken reasonable and proactive steps to prevent fraud and corruption.

In this sense, the BJR and CCL are not contradictory. Rather, they are complementary. A well-documented decision-making process, supported by risk assessments, and effective internal controls, not only strengthens reliance on the BJR but also serves as evidence of adequate procedures under the CCL regime.

# Why Reference Guidance Matters: Turning Legal Risk into Manageable Risk

In practice, the expansion of corporate criminal liability in Indonesia has introduced both greater accountability and greater challenges for businesses. Companies are increasingly scrutinized not only for acts of fraud and corruption, but also for whether those acts could have been prevented through reasonable corporate measures. Yet what qualifies as “reasonable” or “adequate” prevention is often unclear. Guidance on adequate procedures therefore plays an important role in reducing this uncertainty by providing boards and senior management with a clearer basis for understanding how preventive efforts may be assessed when misconduct occurs.

From a practical business perspective, such guidance helps companies move beyond the assumption that compliance systems must be flawless. Most corporations operate under commercial pressure, limited resources, and complex stakeholder relationships. Fraud and corruption risks cannot be fully eliminated; they can only be managed. Adequate procedures guidance reflects this reality by focusing on proportionality, risk prioritization, and informed management decisions, rather than expecting exhaustive or ideal controls. This allows both Indonesian and multinational organizations to design preventive measures that are realistic, defensible, and aligned with day-to-day business operations in Indonesia.

Finally, guidance on adequate procedures matters because it supports more consistent and predictable enforcement outcomes. For businesses, it provides a clearer framework for demonstrating good-faith efforts when controls do not fully prevent misconduct. For regulators and courts, it offers a more structured basis for distinguishing between systemic weaknesses and isolated failures. While guidance does not remove enforcement risk, it makes the risk easier to understand and manage—an important consideration for maintaining investor confidence and promoting responsible corporate conduct in Indonesia’s evolving regulatory environment.

## Adequate Procedures as a Defensive Shield

Under the new Criminal Code, the presence—or absence—of adequate procedures to prevent fraud and corruption may be decisive. Corporations that can demonstrate robust governance, risk-based controls, and active monitoring will be better positioned to argue that any misconduct occurred despite, rather than because of, corporate policy or tolerance.

In practice, this means that compliance programs should no longer be treated as a “checking-the-box” exercise. Instead, they must be embedded into business decision-making, aligned with operational realities, and actively supported by senior leadership.

To assist corporations in establishing adequate procedures, this reference guidance outlines the following frameworks for demonstrating their adequacy:



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## 1. Leadership

Leadership is the foundation of any effective anti-fraud and anti-corruption program. Its impact goes far beyond symbolism; it sets the expectations, tone, and operational priorities that guide the entire organization. Strong leadership ensures that ethical behavior is not only expected but actively reinforced in daily business decisions and operations.

### 1.1. Tone at the top

Tone at the top extends beyond formal statements or policy documents. It is reflected in the everyday actions, decisions, and communications of executives. Leaders who consistently model integrity make it clear that ethical behavior is non-negotiable and that compliance is integral to the business strategy rather than treated as a mere regulatory requirement. Adequate tone at the top empowers employees to raise concerns and reassures them that leadership will act consistently with stated principles. On the other hand, inconsistent behavior, tolerance of minor breaches, or a disconnect between words and actions undermines credibility and weakens the culture of compliance.

### 1.2. Operational support

Effective leadership actively enables compliance by providing the necessary resources, authority, and practical tools. Adequate operational support allows compliance teams to act decisively and independently, challenging risky decisions without fear of reprisal. Organizations that fail to provide such support often leave compliance functions under-resourced, reactive, or marginalized by operational pressures, compromising the integrity and effectiveness of the program.

### 1.3. Integrity as a culture

Embedding integrity into corporate culture ensures that ethical considerations influence recruitment, performance evaluations, promotions, and decision-making. Adequate integration fosters an environment where employees naturally weigh ethical considerations alongside business outcomes, reducing misconduct, building internal trust, and enhancing the corporation's reputation with regulators and stakeholders. Conversely, a culture that prioritizes short-term commercial gains over ethical behavior exposes the organization to legal, financial, and reputational risks, eroding long-term sustainability.

## 2. Risk Assessment

Understanding where fraud or corruption could occur is foundational to a proactive compliance program. Adequate risk assessment goes beyond formality; it identifies, evaluates, and prioritizes vulnerabilities across geographies, business units, and processes. It is documented, dynamic, and regularly updated, ensuring that controls are focused on the areas of highest exposure. Inadequate risk assessment, by contrast, treats compliance as a checklist exercise, applies uniform controls regardless of risk, or ignores emerging risks. When done properly, risk assessment enables targeted investment in controls, ensuring efficiency while protecting the organization from financial and reputational loss.

### 2.1. Comprehensive Risk Assessment

Adopting a risk-based approach to assess the nature and extent of risks enables corporations to identify and prioritize areas most vulnerable to fraud, thereby directing resources and controls toward the highest risks for effective program management. Utilizing data analytics, integrating audit findings, conducting related functions interviews, following industry best practices, and considering regulatory enforcement actions are pivotal for developing a robust risk assessment program. Additionally, it is vital for corporations to evaluate risks based on the nature of the parties involved and the specific business relationships.

### 2.2. Due Diligence

Anti-fraud due diligence involves researching, investigating, assessing, and monitoring to ensure that associated business partners, personnels, transactions, or activities align with the corporation's anti-fraud compliance program. Thorough due diligence should be performed prior to entering business relationships and repeated periodically as part of ongoing monitoring. The implemented due diligence procedures must be proportionate to the identified risks and regularly reviewed as needed.

### 3. Proportional Procedures

Policies and internal controls should be carefully tailored to the organization's risk profile, operational complexity, and business context. Their design must strike a balance: robust enough to prevent, detect, and deter misconduct, yet practical enough not to create unnecessary operational burden. When done effectively, proportional procedures help disseminate compliance into everyday operations, ensuring that ethical and legal standards guide decision-making without slowing down business execution. Inadequate or one-size-fits-all procedures risk either leaving gaps that expose the organization to misconduct or creating overly cumbersome processes that employees bypass or ignore.

#### 3.1. Policy and structure

Clear and accessible policies provide employees and business partners with a platform to make consistent and defensible decisions. Adequate policies explicitly define prohibited conduct, outline escalation pathways, assign responsibilities to key roles, and clarify consequences for non-compliance. A well-structured organization reinforces these policies with clear accountability and senior oversight, particularly for high-risk areas. By comparison, inadequate policies are often generic, outdated, or disconnected from operational realities, resulting in employees uncertain about expectations or how to act. Organizations that integrate policies into operational workflows, performance metrics, and reward systems reinforce ethical behavior as part of day-to-day business decisions, ensuring alignment between principles and practice.

#### 3.2. Internal control

Internal controls—such as segregation of duties, matrix of approvals, reconciliations, and automated alerts—should be proportional to the risks identified and subject to regular testing. Adequate controls help detect anomalies, prevent unauthorized actions, and facilitate timely escalation of potential breaches. Controls that are either too rigid or too weak can undermine operations or leave the organization exposed to misconduct. Leading organizations continuously monitor, review, and refine controls in response to incidents, audit findings, and evolving risk environments, creating a dynamic system that both supports business efficiency and reinforces compliance.

### 4. Communication

Effective communication is the backbone of any compliance and integrity program. Even the most well-designed policies, risk assessments, and controls are ineffective if employees and stakeholders do not understand their purpose, trust the system, or feel empowered to act. Clear, consistent, and transparent communication ensures that expectations are understood, aligns behavior with organizational values, and helps translate abstract policies into practical, everyday decision-making.

Organizations that communicate effectively make compliance feel integral to operational excellence and risk management rather than an external obligation. Employees in such environments are more likely to engage with policies proactively, report concerns early, and make ethical decisions under pressure. Meanwhile, poor communication fosters uncertainty, erodes trust, and allows misconduct to remain hidden until it escalates into serious financial or reputational consequences.

#### 4.1. Socialization and training

Training should be targeted, scenario-based, and reach all employees and relevant third parties. Effective programs are interactive, refreshed regularly, and illustrate the real-world consequences of misconduct. Training that is one-off, generic, or purely formalistic results in employees unaware of risks or unclear about expected actions. Proper socialization fosters awareness, practical understanding, and proactive ethical decision-making, ensuring employees know how to act in line with the organization's values.

#### 4.2. Whistleblowing System

A confidential and protected reporting channel encourages early identification of potential misconduct and reinforces trust in the compliance system. Adequate systems provide anonymity, protect against retaliation, and ensure timely and transparent follow-up. Systems that are opaque, fail to protect reporters, or are difficult to access create distrust and increase the likelihood of unreported issues escalating into material risk.

### 4.3. Investigation

Reports of potential violations must be handled promptly, fairly, and consistently. Adequate investigations are well-documented, conducted by trained personnel, and lead to meaningful corrective or disciplinary actions. Processes that are slow, inconsistent, or biased undermine both the credibility of the compliance framework and employee confidence. A robust investigative approach demonstrates that ethical breaches are taken seriously and that the organization responds decisively to mitigate risk.

## 5. Monitoring and Improvement

Compliance programs are not static; they require continuous oversight to remain effective and responsive to evolving risks. Ongoing monitoring ensures that policies, controls, and behaviors align with the organization's standards and that emerging issues are identified and addressed before they escalate. Organizations that integrate monitoring and improvement into their culture demonstrate resilience, adaptability, and a genuine commitment to integrity, rather than treating compliance as a regulatory formality.

### 5.1. Internal audit

Independent internal audits play a crucial role in assessing whether policies and controls are functioning as intended. Adequate audits focus on high-risk areas, evaluate both the design and operational effectiveness of controls, and track the implementation of remedial actions. They provide an objective view that highlights gaps and weaknesses before they lead to financial, operational, or reputational losses. In contrast, inadequate auditing allows vulnerabilities to remain unaddressed, giving a false sense of security and undermining confidence in the compliance program.

### 5.2. Monitoring from executives

Executives should actively oversee compliance performance using key metrics, dashboards, and regular reporting. Adequate executive monitoring ensures that leadership stays informed of emerging risks, recurring incidents, and the effectiveness of mitigation efforts. When executives fail to engage consistently, recurring issues may go unnoticed, eroding trust, organizational integrity, and the credibility of compliance initiatives.

### 5.3. Continuous improvement

A mature compliance program treats improvement as a continuous process. Lessons from incidents, audit findings, and changes in the business or regulatory environment should feed back into policies, controls, and training. Adequate programs adapt proactively to evolving risks, strengthening both resilience and operational effectiveness. By comparison, programs that are static or reactive fail to anticipate new threats, potentially exposing the organization to preventable risks. Continuous improvement demonstrates that the organization's commitment to compliance extends beyond mere regulatory obligation, applying ethical conduct into its culture and decision-making.

## Looking Ahead: Building Resilience and Sustainable Value

The introduction of Corporate Criminal Liability under Indonesia's Criminal Code marks more than a regulatory shift—it signals a new era of accountability and expectation for corporate behavior. For businesses willing to embrace this challenge, the rewards extend far beyond legal compliance. Strengthening governance, embedding robust preventive procedures, and documenting prudent decision-making not only mitigate legal risks but also cultivate a culture of integrity that benefits everyone—from executives and managers to emerging leaders across the organization.

Where it matters most, corporations that prioritize prevention are better equipped to make confident decisions, protect their people, and sustain long-term growth even amid complex and evolving regulatory environments. Courts are increasingly scrutinizing intent, process, and evidence of preventive action; demonstrating sound judgment today can safeguard the corporation tomorrow.

Put simply: robust compliance is an investment in protection, trust, and business continuity. As the saying goes, if you think compliance is expensive, try non-compliance. In the evolving landscape of corporate accountability, proactive prevention is not just prudent—it's a competitive advantage.

## Contact Us

Find out how EY Forensics can help you prepare compliance to the corporate criminal liability and protect your business. Our professionals bring practical insight to assess your situation and provide tailored support that addresses your specific needs.



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