

“FROM INDIVIDUALS TO ENTITIES: UZBEKISTAN’S SHIFT TOWARD CORPORATE CRIMINAL LIABILITY AND LESSONS FROM THE U.S. EXPERIENCE”

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Abstract

as emerging markets rapidly integrate into the global financial system, the legal mechanisms used to combat corporate misconduct are undergoing a profound harmonization. For decades, a deep doctrinal divide existed between the United States’ common-law approach—which aggressively utilizes the doctrine of *respondeat superior* to hold corporations criminally liable—and the traditional civil-law maxim *societas delinquere non potest* (a legal entity cannot commit a crime), long adhered to by post-Soviet states like the Republic of Uzbekistan. However, driven by sweeping economic liberalization, the pursuit of Foreign Direct Investment (FDI), and pressure from international anti-corruption bodies, Uzbekistan is currently navigating a historic legal paradigm shift to formally introduce corporate criminal liability (CCL) into its statutory framework.

This article explores Uzbekistan’s unprecedented legal transition through the comparative lens of the American corporate criminal justice system. While the U.S. model provides a robust blueprint for institutional accountability, it also serves as a cautionary tale regarding the devastating collateral consequences of corporate indictments. By analyzing the doctrinal friction between personal culpability and organizational fault, as well as the mechanics of Uzbekistan’s newly mandated "compliance controls," this article evaluates how a transitioning economy can modernize its legal code without destabilizing its markets. Ultimately, it proposes a tailored, hybrid framework for Uzbekistan—advocating for a "failure to prevent" model of liability, statutory safe harbors for robust compliance programs, and the transparent use of Deferred Prosecution Agreements (DPAs) to balance economic realities with meaningful deterrence.

Keywords

Corporate Criminal Liability (CCL), Comparative Law, Uzbekistan Criminal Code, *Respondeat Superior*, *Societas delinquere non potest*, Anti-Corruption Compliance, Deferred Prosecution Agreements (DPAs), Organizational Culpability, Foreign Direct Investment (FDI), White-Collar Crime.

I. Introduction

For centuries, criminal jurisprudence was exclusively a human affair. Grounded in the requirement of *mens rea*—a guilty mind—criminal law fundamentally assumed that only a natural person possessed the moral agency required to commit a crime. You cannot put a corporation in handcuffs, nor can a fictitious legal entity possess a conscience. Yet, as the global economy industrialized and corporate entities amassed power rivaling that of sovereign states, legal systems were forced to adapt. How does a society punish systemic, institutionalized misconduct when the "offender" exists only on paper?

The United States and the Republic of Uzbekistan have historically answered this question from opposite ends of the legal spectrum. In the U.S., a common-law jurisdiction, the pivot occurred more than a century ago. With the landmark 1909 Supreme Court decision in *New York Central & Hudson River Railroad Co. v. United States*, American jurisprudence boldly imported the tort doctrine of *respondeat superior* into criminal law. The Court ruled that a corporation could indeed be indicted for the crimes of its employees, provided they were acting within the scope of their employment and for the entity's benefit. Today, U.S. corporate criminal liability is a sprawling, mature apparatus characterized by massive financial penalties, Deferred Prosecution Agreements (DPAs), and intricate compliance expectations enforced by agencies like the Department of Justice (DOJ). Conversely, Uzbekistan's legal framework is rooted in the civil-law tradition and shaped by its post-Soviet history. For decades, Uzbek law has strictly adhered to the classical Roman maxim *societas delinquere non potest*—a legal entity cannot commit a crime. Under the current Uzbek Criminal Code, if a company engages in systematic bribery or environmental degradation, only the individual human actors (such as directors or employees) face criminal prosecution. The corporation itself is shielded from the criminal justice system, subject only to civil or administrative penalties.

However, a profound legal and cultural shift is currently underway in Central Asia. Since 2016, Uzbekistan has pursued aggressive economic liberalization, seeking to attract Foreign Direct Investment (FDI), integrate into global markets, and eventually accede to the World Trade Organization (WTO). In doing so, the Uzbek legislature has encountered a harsh reality long understood by international regulators: administrative fines and individual prosecutions are often woefully inadequate to deter institutionalized corruption. When an entity is structurally designed to prioritize profit over compliance, punishing a single "rogue employee" rarely changes the underlying corporate culture. Recognizing this, Uzbekistan has

taken unprecedented steps toward modernizing its legal framework, establishing an Anti-Corruption Agency and aggressively debating draft amendments to the Criminal Code that would officially introduce corporate criminal liability. This transition marks a watershed moment in Uzbek legal history, but drafting a statute is only the first hurdle. As Uzbekistan bridges the gap between individuals and entities, it faces complex questions about culpability, economic collateral damage, and procedural fairness. Simply importing the concept of corporate criminal liability without careful guardrails risks destabilizing businesses and punishing innocent shareholders and employees.

This article analyzes Uzbekistan's historic shift toward corporate criminal liability by using the U.S. experience as a comparative lens. While the United States offers a powerful blueprint for holding legal entities accountable, it also serves as a cautionary tale. By examining the structural successes and the unintended consequences of the American system—such as the devastating "Arthur Andersen effect" and the ongoing debate over whether DPAs allow companies to simply "buy" their way out of a conviction—this article explores how Uzbekistan can thoughtfully craft a corporate criminal justice system that deters corruption without stifling its rapidly growing economy.

II. The Doctrinal Divide: *Societas Delinquere vs. Respondeat Superior*

To understand the magnitude of Uzbekistan's current legal reforms, one must first examine the philosophical chasm that has historically separated civil-law systems from American common law regarding corporate crime. At the heart of this divide is a deceptively simple question: How do you punish a phantom? A corporation, after all, is merely a legal fiction—a web of contracts and charters. It has no physical body to sit in a jail cell, and, crucially, it has no psychological mind to harbor malicious intent.

Historically, the legal framework of Uzbekistan—inherited from the Soviet legal tradition and grounded in broader continental European civil law—has provided a strict answer to this problem: you do not punish the phantom; you punish the humans pulling the strings. This approach is anchored in the traditional legal maxim *societas delinquere non potest* (a legal entity cannot commit a crime). In Uzbek criminal jurisprudence, as in many civil-law systems, the bedrock of a criminal conviction is the principle of personal culpability. A crime requires both an *actus reus* (a guilty act) and a *mens rea* (a guilty mind). Because a legal entity cannot formulate subjective criminal intent, it fundamentally lacks the capacity to be a subject of criminal law.

Furthermore, the historical economic context of Uzbekistan makes this doctrinal stance entirely logical. During the Soviet era and the immediate post-

independence period, the vast majority of large enterprises were state-owned. In a command economy, prosecuting a corporation criminally would effectively mean the state was prosecuting itself, moving money from one government pocket to another. Therefore, the law was structured to target the human elements. If an enterprise engaged in corruption or fraud, the Uzbek Criminal Code dictated that the directors, accountants, or specific employees responsible would face imprisonment or criminal fines. The enterprise itself might face administrative penalties or civil liability, but it was insulated from the profound stigma and severe punitive tools of the criminal justice system. However, as a broader legal explanation, this individual-only approach reveals a significant blind spot in a modern market economy. When a company structurally incentivizes its sales team to bribe foreign officials to secure contracts, the "guilt" does not solely reside in the low-level employee who handed over the cash. The guilt is systemic. By treating corporate misconduct merely as a collection of individual crimes, the traditional system often fails to address the toxic corporate culture that birthed the offense. The corporation reaps the financial rewards of the crime, treats any administrative fines merely as a "cost of doing business," and simply replaces the indicted employee with a new one.

The United States solved this philosophical dilemma not through theoretical purity, but through sheer economic pragmatism. At the turn of the 20th century, America was undergoing rapid industrialization. Massive railroad monopolies and corporate trusts wielded immense power, often acting with impunity because it was practically impossible to prove which specific human executive authorized a complex corporate crime. Recognizing that corporations had become the dominant actors in society, the U.S. Supreme Court made a radical doctrinal leap in its 1909 *New York Central & Hudson River Railroad* decision. The Court bypassed the philosophical problem of the "guilty mind" by importing a concept from civil tort law: *respondet superior* ("let the master answer"). Under this doctrine, the United States federal justice system can impute both the actions and the intent of an employee directly onto the corporation. For a corporation to be criminally indicted in the U.S., prosecutors generally only need to prove two things: first, that the employee was acting within the scope of their employment, and second, that their actions were undertaken, at least in part, to benefit the corporation.

This standard is breathtakingly broad. In the U.S., a multinational conglomerate with a flawless board of directors and a sophisticated compliance department can theoretically face a catastrophic criminal indictment because a single mid-level manager decided to bribe a local official to expedite a permit. The American rationale is that because the corporation ultimately profits from the

actions of its agents, it must bear the ultimate criminal responsibility for policing them.

For decades, these two systems operated in parallel, reflecting different economic realities. The U.S. relied on the heavy hammer of corporate criminal liability to force companies to police themselves, while Uzbekistan relied on personal liability and administrative oversight in a state-dominated economy. But as Uzbekistan aggressively transitions into a privatized, globally integrated market economy, the limitations of *societas delinquere non potest* have become starkly apparent. Foreign investors require a level playing field, and international anti-corruption bodies—such as the OECD and the Financial Action Task Force (FATF)—increasingly demand that nations possess the legal tools to dismantle corrupt entities, not just punish their employees. The realization that administrative fines are no longer sufficient to deter deeply capitalized, modern corporate actors is exactly what has driven Uzbekistan to look toward the American model, setting the stage for one of the most significant legal transformations in the country's history.

III. The Catalyst for Reform: Global Standards and the Mechanics of Uzbekistan's Legislative Shift

To understand why a nation rooted in a century of civil-law tradition would suddenly upend its approach to corporate culpability, one must look beyond the courtroom and into the macroeconomic strategy of modern Uzbekistan. The push to introduce corporate criminal liability (CCL) is not merely a theoretical legal exercise; it is a vital economic imperative driven by the country's aggressive integration into the global financial system. When President Shavkat Mirziyoyev assumed office in 2016, Uzbekistan embarked on a historic campaign of economic liberalization, seeking to shed its isolationist past, attract Foreign Direct Investment (FDI), and pave the way for World Trade Organization (WTO) accession. However, international capital requires a predictable, transparent legal environment. Global regulatory bodies—such as the Financial Action Task Force (FATF) and the Organization for Economic Co-operation and Development (OECD)—increasingly demand that nations possess the statutory teeth to dismantle corrupt entities, not just punish their human operators.

While Uzbekistan ratified the UN Convention Against Corruption (UNCAC) in 2008, it historically satisfied the convention's requirement to hold legal entities accountable by relying on administrative and civil liability. In practice, this created a massive enforcement loophole. Under the traditional system, if a construction conglomerate secured a lucrative state contract through systematic bribery, the state would prosecute the specific director or accountant who facilitated the payoff. The corporation itself, however, would merely face an administrative fine. From a

corporate risk-management perspective, an administrative fine is often viewed not as a deterrent, but as a "tax" on corruption—a simple cost of doing business. The corporation retains the illicitly gained contract, absorbs the fine, replaces the incarcerated executive, and continues operating. Administrative law lacks the profound societal stigma, the mandatory debarment from public procurement, and the existential threat of corporate dissolution that criminal law wields. Recognizing that this dynamic was hindering the country's fight against systemic corruption and money laundering, the Uzbek legislature realized that a structural upgrade was necessary.

The turning point came with the establishment of Uzbekistan's dedicated Anti-Corruption Agency in 2020, which, alongside the Ministry of Justice and the Prosecutor General's Office, began aggressively drafting legislation to amend the Criminal Code and the Criminal Procedural Code to recognize legal entities as subjects of criminal law. From a legal analysis standpoint, the drafting of these amendments reveals a delicate balancing act. Uzbekistan is not simply copy-pasting the American *respondeat superior* standard. The U.S. model—which allows a massive corporation to be indicted for the unauthorized acts of a single, rogue, low-level employee—is widely considered too draconian by civil-law purists. Instead, the Uzbek legislature has looked to a more nuanced, hybrid approach, heavily influenced by modern European statutes like the UK Bribery Act or France's *Sapin II*.

Under the frameworks currently being debated and integrated into Uzbek law, corporate criminal liability is intimately tied to the concept of "compliance control." Rather than imposing strict liability for any employee's misconduct, the emerging Uzbek model focuses on organizational failure. A corporation is primarily exposed to criminal liability for specific offenses—such as bribery, money laundering, and human trafficking—if the misconduct was committed by a senior executive, or if the entity fundamentally failed to implement adequate internal anti-corruption compliance protocols to prevent the crime.

This represents a monumental cultural shift for Uzbek businesses. Historically, internal corporate compliance in Uzbekistan was largely a paper exercise—a box to check for human resources. Now, it is becoming a critical legal shield. The government has already begun mandating the creation of independent "compliance control" units within state-owned enterprises, banks, and entities with a state share. These units are tasked with auditing internal processes, managing conflicts of interest, and reporting irregularities. By tying the threat of corporate criminal liability to the presence or absence of these compliance programs, the Uzbek legislature is attempting to fundamentally rewire corporate psychology. The goal is

no longer just to catch corrupt individuals after the fact, but to force the legal entity itself to become the first line of defense. The corporation is effectively deputized to police its own ranks, knowing that if it turns a blind eye, the entity itself – and not just the employee – will face the full, devastating weight of the criminal justice system.

However, as Uzbekistan builds this new legal machinery, it must look closely at the American experience. Giving prosecutors the power to indict a corporation is akin to handing them a nuclear launch key; it is a weapon of immense power that, if used recklessly, can trigger catastrophic collateral damage.

IV. Conclusion

Uzbekistan's endeavor to introduce corporate criminal liability represents far more than a technical amendment to its Criminal Code; it is a profound philosophical shift. By moving past the rigid boundaries of *societas delinquere non potest*, Uzbekistan is sending a definitive signal to the global market: systemic corporate corruption will no longer be treated as a mere administrative cost of doing business. However, as the American experience vividly illustrates, granting the state the power to criminally indict a legal entity is akin to handing prosecutors a blunt, incredibly destructive instrument. If wielded recklessly, the collateral damage – lost jobs, shattered supply chains, and market destabilization – can easily outweigh the benefits of justice.

The United States has spent over a century refining its corporate criminal justice system, oscillating between the aggressive *respondeat superior* standard and the widespread use of Deferred Prosecution Agreements (DPAs) to avoid corporate death sentences. Uzbekistan has the unique historical advantage of learning from these growing pains. As the Uzbek legislature finalizes its statutory framework and foreign multinationals adapt to this new compliance landscape, the following strategic proposals – or "offers" – can help bridge the gap between pure legal theory and economic reality. Uzbekistan should explicitly reject the broad U.S. *respondeat superior* standard, which allows a company to be indicted for the unauthorized acts of a rogue, low-level employee. Instead, the legislature should adopt a fault-based organizational liability model, akin to the UK Bribery Act's "failure to prevent" offense or the U.S. Model Penal Code. Under this framework, a corporation would only face criminal liability if a senior executive directed or implicitly authorized the misconduct, or if the entity systematically failed to implement adequate controls to prevent it. This ensures that the law punishes truly corrupt corporate cultures, rather than entities that simply had the misfortune of hiring a bad actor.

In the United States, a strong compliance program is typically treated as a

mitigating factor during prosecutorial discretion or sentencing, but it is rarely an absolute legal defense. Uzbekistan has the opportunity to innovate by legislating a formal "Safe Harbor" provision. If an Uzbek enterprise or a foreign subsidiary can prove it had an independently audited, fully resourced, and active "compliance control" unit prior to the offense, this should serve as an affirmative defense against corporate criminal liability. By legally guaranteeing that good-faith compliance efforts will protect the corporate veil, the state will heavily incentivize companies to invest in self-policing, effectively outsourcing anti-corruption enforcement to the private sector. If Uzbekistan introduces corporate criminal liability, it must simultaneously introduce a mechanism to avoid the "Arthur Andersen effect"—the total collapse of a company upon mere indictment. Introducing a statutory framework for Deferred Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs) is essential. However, to avoid the U.S. critique that DPAs are opaque, "pay-to-play" settlements for the wealthy, Uzbekistan must require mandatory judicial oversight. Before a DPA is approved, an Uzbek court should publicly evaluate whether the settlement is in the public interest, whether the fines are proportionate, and whether the company is genuinely overhauling its leadership and compliance structures.

The convergence of American common-law enforcement strategies with Uzbekistan's evolving civil-law framework is a testament to the increasingly borderless nature of commerce and crime. Ultimately, the true measure of a corporate criminal justice system is not found in the number of companies it destroys, but in the cultures it manages to reform. By thoughtfully integrating these global lessons, Uzbekistan can forge a modern, balanced legal regime—one that fiercely protects its markets from corruption while providing a safe, predictable, and fair environment for the foreign investment it needs to thrive in the 21st century.

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