U.K. CORPORATE MANSLAUGHTER ACT INTRODUCES NEW LIABILITIES

Companies with U.K. exposures face new potential liabilities as of April 6, 2008, when the Corporate Manslaughter and Corporate Homicide Act 2007 went into effect in the U.K. The law created a new offence of corporate manslaughter (corporate homicide in Scotland). With some exceptions, it affects both private and public sector organizations. Most entities can now more easily be prosecuted in the event of a gross breach of the duty of care resulting in a person’s death. Such breaches can occur with regard to health and safety matters or the supply of goods and services.

The change in liability may create gaps in coverage in some policies.

THE LEGISLATION

An organization affected by the act is guilty of an offence if the way in which its activities are managed or organized causes a person’s death and if this amounts to a gross breach of a relevant duty of care owed by the organization to the deceased.

However, an organization is guilty of an offence only if the way in which activities are managed or organized by senior management is a substantial element in the breach of the relevant duty of care.

The organizations affected are:

- Corporations
- Most governmental departments and governmental agencies (including by implication local authorities)
- Police forces
- Partnerships, trade unions or employers’ associations that act as employers

An organization found guilty under the act faces an unlimited fine. Prosecution costs can also be awarded against the organization, and the court may also order the breach to be remedied and order the conviction to be publicized.

The Sentencing Advisory Panel, which advises on sentencing issues in England and Wales, has suggested that punishment include, but not be limited to, a fine of 2.5% to 10% of annual turnover and mandatory publicity orders.
The common law offence of manslaughter by gross negligence is abolished in its application to corporations and to any other organization subject to the act.

**THE ISSUE OF INDIVIDUAL LIABILITY**

While the act assigns no direct individual liability, a number of commentators believe that the implementation of the new act will mean that directors and senior managers will increasingly be prosecuted under existing Health and Safety laws.

Further, while an individual cannot be held liable for aiding, abetting, counseling or actively sponsoring the commission of an offence under the act, directors and senior managers remain liable to prosecution under the common law offence of gross negligence manslaughter.

**IMPLICATIONS FOR LIABILITY INSURANCE**

The new legislation will affect the following classes of insurance.

- Employers’ Liability (EL)
- Public and Products Liability (PL/Prods)
- Motor

In the U.K., virtually all EL and PL/Prods policies pay (or indemnify in respect of) legal costs incurred with the consent of the insurer in the defense of an actual or potential claim made under the policy. This may include defense costs of a criminal proceeding if the insurer feels it is in its interest to pay for the defense because the outcome may influence any subsequent civil claim for damages. Most policies also provide some cover for representation in courts of summary jurisdiction.

Some go further and provide cover where the insured is prosecuted for breach of statutory and/or common law duty. Normally, such cover applies only in respect of specific legislation, e.g., the Health and Safety at Work Act or the Consumer Protection Act. Motor policies provide similar cover but in addition usually provide defense cost cover for manslaughter actions brought against drivers of insured vehicles.

**With some exceptions, most liability policies will require extensions to cover exposures created by the new legislation.**
In our view, cover will need to extend to:

- Legal costs and expenses incurred in defending allegations of corporate manslaughter or corporate homicide made against the insured or other insured party
- Costs and expenses of appeal including appeal against remedial and publicity orders incurred with the consent of the insurer
- Prosecution costs awarded against the insured

**STRATEGIES FOR MULTINATIONAL COMPANIES**

The local U.K. insurance market has been slow to respond to the challenge of the new legislation, and there is as yet no agreed market response from EL/PL and Motor carriers.

Generally, however, most will provide defense costs, although this is often linked to there being a civil claim under the policy and in some cases is subject to an inner limit. Most will not cover awards of prosecution costs. Insureds should also note that in many cases, cover is not automatic – it has to be specifically requested.

So far, discussions with multinational program underwriters reveal that they too are slow to respond. The most effective strategy to address the problem in most cases is likely via the controlling office and controlling underwriter for the Public Liability policy. For Motor and EL lines, extensions are usually subject to local underwriters’ discretion. We are in the process of requesting extensions to master policies and/or local policies for many multinational clients and urge risk managers to promptly address their new U.K. exposures.

**CONTACT**

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