



**TYSERS**  
UK DIVISION



10 December 2007

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Insurance & Risk Management Solutions

## CLIENT BRIEFING NO:25

### The Corporate Manslaughter and Corporate Homicide Act 2007

Zeebrugge, Piper Alpha, Clapham, Ladbroke Grove, Kings Cross, the Marchioness, Larkhall, Hatfield, Potters Bar and Morecombe Bay, a roll call of disasters over the decades causing major loss of life.

10 years ago the Government promised to re-look at businesses responsibilities for corporate manslaughter and the Corporate Manslaughter & Corporate Homicide Act 2007 is the result. To reflect the realities of the modern corporate environment it has moved from the concept of identifying a "controlling mind", which since 1992 has produced only 6 convictions out of 34 prosecutions.

The new Act becomes effective from the 6<sup>th</sup> April 2008 and after this date, an organisation's guilt will be judged by the way its activities are managed by senior management if that amounts to a gross breach of the duty of care owed to employees and the public.

These duties of care are the usual duties owed under law, for example, occupiers' liability, the supply of goods, the use of vehicles and machinery, health and safety and the general law of negligence.

#### What difference does the Act make?

It creates no new legal obligation on businesses and effectively removes the prospect of any individual being held responsible and in future only companies and organisations can be responsible for corporate homicide.

While individuals cannot be prosecuted under the Act, they remain liable under health & safety law and general common law for the manslaughter offence.

The biggest difference created by the new Act is that the number and likelihood of successful prosecutions against companies will rise substantially in the future. While the existing penalties of unlimited fines and remedial action will continue for companies, in addition Courts can now make "publicity orders" following convictions, forcing companies to publish details of their offence and penalties at their own cost. Such negative publicity risks should be a major driver for businesses to improve and maintain their health and safety practices.

#### What should businesses do?

One of the intended objectives of the Act is undoubtedly to motivate companies and organisations to re-visit and refresh their health and safety strategies but more importantly to cultivate a health and safety culture that permeates throughout all the management levels of a business and to keep abreast of all new developments in their industry.

With acknowledgment to QBE Insurance, we attach their "Issues Forum" for November 2007 which goes into the whole concept of re-invigorating a firm's health and safety culture in much more detail and also provides a full background to the origins and details of this new Act



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## Are there any insurance implications?

Yes, principally liability insurance protection (Employers and Public/Products Liability) and also Directors and Officers Liability insurance.

By definition, corporate manslaughter events involving the death of one or more employees or members of the public are likely to be substantial claims under your Employers or Public Liability policy (or both). Indeed it's difficult to think of corporate manslaughter circumstances where your liability insurers would not be involved.

In addition to meeting compensation awards for claims for the death of employees and third parties, liability policies will also normally cover the legal defence costs arising from such claims providing they do not in total exceed the limit of indemnity under the policy, so it is important that indemnity limits are maintained at an adequate level with a good safety margin for legal defence costs. Generally policies will also provide a personal indemnity to directors and employees also, including defence costs, arising from claims for which the insurer is liable to indemnify the business.

A further common extension of liability policies is cover for the defence costs of many types of health and safety prosecutions (but not all) against the company or individuals, where it is connected to an event which is the subject of a claim under the policy.

It should be emphasised however that resulting fines and penalties from health and safety, or in future corporate killing convictions, are **not covered** under liability or other insurance policies.

Directors and Officers Liability insurance is primarily aimed at protecting the liability of individuals in a company for compensation, awards and legal defence costs for wrongful acts committed in their capacity as a director or officer of the company. The protection is either in the form of direct payments to the individual, or to the company in re-imbursment where the company has already paid the costs of the individual director or officer. Prosecutions under health and safety law or common law against individuals would certainly constitute wrongful acts and activate the Directors and Officers cover even if the businesses liability insurance protection had not been triggered by the event in question.

Where the event does not trigger the businesses liability protection however, it is necessary to look to the Directors and Officers Policy to also provide cover for the corporate entity as well as the individual as this will not be insured unless the cover is suitably arranged and the wording of the policy extends to give "entity" protection.

Tyser's are able to offer advice and guidance on the comprehensive arrangement of both your Liability Insurances and Directors and Officers Insurances and please speak to your usual Tyser contact if any further information is required.

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