

Navigating the legal minefield

The UK is cracking down hard on corporate abuse, but robust compliance policies – as well as expert legal advice – can help companies steer clear of trouble, as Aziz Rahman of leading specialist fraud law firm Rahman Ravelli, explains.

Legal landmarks

- The Fraud Act 2006 abolished the deception offences in the Theft Acts 1968 and 1978 and creates a new single offence of fraud that can be committed in three separate ways.
- The Act effectively extends the fraudulent trading provisions of the Companies Act 2006 so that sole traders, trust, partnerships and so on can now be prosecuted for fraudulent trading - previously there had to be a limited company.
- The Money Laundering Regulations 2007: Businesses covered by the Regulations must ensure they have anti-money laundering controls in place and must report 'suspicious activity' to the Serious Organised Crime Agency.
- The Bribery Bill - announced in November's Queen's Speech, will modernise the law of bribery and will cover the practice of bribing a foreign public official to obtain or retain business.

Company boardrooms need to be aware of the ream of new penalties that can be used against them and their directors following a number of recent changes in law.

The introduction of the Fraud Act 2006, changes to the Companies Act, the impending Bribery Bill, the proposed changes to the Enterprise Act and the Money Laundering Regulations of 2007 (revised in 2008) all seek to make directors more easily accountable for their actions (and omissions) and those of the companies they manage.

They also seek to increase the punishments that regulators and other enforcement agencies can levy against companies and individual directors.

As insurers increase their premiums while cutting down the amount of cover they would once offer in typical directors and officers (D&O) policies in the face of increasing risk, companies need to realise that creating a strong culture of legal compliance, risk management and sound corporate governance is likely to be their best defence should any investigation or prosecution take place.

As a first step, companies should review their operating procedures and ethics programmes to ensure that they are following industry best practice. The review needs to be as independent and wide-ranging as possible, particularly as it must also include the work and conduct of suppliers acting on their behalf.

Secondly, the board needs to make sure that the ethical codes of conduct that they draw up are communicated throughout the organisation. All employees need to be aware of the policies and checks need to be in place to ensure that they are putting them into practice as part of their work.

Thirdly, there needs to be an internal and confidential mechanism whereby incidents of non-compliance can be reported quickly and escalated up to board level to review and take remedial action and even notify the relevant authority if necessary.

However, if a company does uncover any form of wrongdoing, it should consult with its legal team

immediately. Lawyers will then be able to assess whether the company can receive any degree of leniency for co-operating with any pending investigation, or whether they can agree on any form of plea bargaining deal under the 2009 'Attorney General's Guidelines on Plea Discussions in Cases of Serious or Complex Fraud', both of which are avenues that the likes of the Serious Fraud Office are keen to pursue as a way of avoiding unnecessarily expensive prosecutions.

The Serious Fraud Office, as well as the Office of Fair Trading, have also been keen to encourage companies to self-report incidences of bribery, price-fixing and other unfair and corrupt practices. But both have also made it clear that they will not offer an unconditional guarantee that companies and their directors will not be prosecuted in exchange for coming forward at an early stage. This is why seeking professional and expert legal advice is crucial.

Companies and their directors are often not best

placed to deal with the agencies that may end up prosecuting them. Under the new Plea Bargaining arrangements, for example, the Attorney General has made a move towards U.S. style litigation where confidential discussions on the subject of plea can take place, but only where the company involved is legally represented. Specialist lawyers like Rahman Ravelli can help companies steer through these tough decisions while preserving their reputation and corporate integrity.

For more information, contact us:

Tel: 01422 346666

Email: seriousfraud@rahmanravelli.co.uk

Web: rahmanravelli.co.uk

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