

Wielding a big stick

The government is pulling no punches in its commitment to enforcing better corporate governance by threatening tougher sanctions against companies and their directors, **says Aziz Rahman.**

Given the dismal record that agencies like the Serious Fraud Office (SFO) have had in trying to prosecute companies for offences like fraud and price-fixing, it is perhaps unsurprising that the government wants to improve its success rate in the courts.

And a succession of recent legislation is more likely to help it do so. The new Fraud Act, which came into

The government is looking to boost its record of fraud prosecutions.

effect in 2007, has updated, widened, and simplified the pre-existing law so that generally speaking, fraud is now a single offence that can be committed in three ways: by false representation, by failure to disclose information, and by abuse of position. The common law offences of conspiracy to cheat the revenue and conspiracy to defraud still exist but the old statutory 'deception' offences, such as obtaining a pecuniary advantage by deception, are all abolished under the Fraud Act.

The current Bribery Bill, which the government wants to become law as soon as possible, will make it a criminal offence to give or offer a bribe in the UK or abroad and will increase the maximum prison term from seven to ten years. And for the first time, the bill also introduces a corporate offence of negligent failure to prevent bribery on behalf of a business (clause 5).

The Bill puts an increased onus on directors to ensure compliance and puts the board squarely in the frame for any corrupt activity committed by anyone working on behalf of the organisation. The bill makes it clear that it does not matter whether the bribery was committed in the UK or abroad and that it will apply to all British nationals, UK companies and anyone ordinarily resident in the UK. If an offence is committed by a company, then any senior manager of the business will be guilty if they consented to or connived in the bribery.

These are not the only changes that the government has made, or intends to make. The Ministry of Justice has recently changed the rules on legal aid so that companies and directors can no longer reclaim their full legal costs in criminal trials – even if they are acquitted of all the charges against them. This could result in companies being landed with legal bills of millions of pounds, even though they are innocent.

Added to that, the Office of Fair Trading wants to disqualify directors for anti-competitive practices that "they ought to have known about" as a way of improving corporate governance and making the boardroom even more personally accountable. The changes, if made, will raise the bar considerably from the current threshold whereby directors are only likely to be prosecuted if they are personally involved.

It is obvious that the government is stacking the chips in its favour to raise its prosecution record, and, as a result, that strict legal compliance, a firm adherence to industry best practice, and greater risk awareness must be a priority for all companies and directors, including non-executives. If companies fail to act, it could be a very costly mistake.

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