U.K. Corporate Manslaughter Act: Implications for Your Travel Program

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Scheduled to go into effect April 6, 2008, the U.K. Corporate Manslaughter and Corporate Homicide Act 2007 (“Act”) has captured widespread attention. While it applies only in the United Kingdom, the law is prompting many employers to reexamine how they are protecting their employees.

WHAT IS THE CORPORATE MANSLAUGHTER ACT?

Reforming the existing U.K. corporate manslaughter laws, the Act is intended to provide a more effective means to prosecute corporations for “corporate manslaughter” in England, Wales and Northern Ireland, and “corporate homicide” in Scotland. Intended to punish corporations for failure to properly manage the health and safety of their employees, the law toughens businesses’ “duty of care” responsibilities toward their employees.

HOW IS THE NEW CORPORATE MANSLAUGHTER ACT DIFFERENT FROM THE CURRENT LAW?

Existing legislation in the U.K., in the form of the Health and Safety at Work etc Act of 1974 (“HSWA”), addresses corporate liability for negligence resulting in injury or death. HSWA defines key issues such as “general duties of employers to their employees” and “breach of a duty.” It also requires that, before a company may be convicted of manslaughter, a “directing mind” of the organization (a senior executive who could be said to “embody the company in his actions and decisions”) also had to be guilty of the offence. This requirement is known as the identification principle.

The new law shifts responsibility for corporate failings to the corporation as a whole. While HSWA requires that a very senior individual be found personally guilty of gross negligence manslaughter before the company itself may be convicted, the new statute enables prosecution of the organization alone for failures in management systems and practices. This provides a more effective means for prosecuting the worst corporate failures to protect their people.

WHY WAS THE CORPORATE MANSLAUGHTER ACT CREATED?

More than 10 years in the making, the Act was driven both by disappointment with current law’s effectiveness as well as recognition that organizational management has changed over time — particularly in larger companies.

Under the HSWA, charges were brought in 34 cases of industrial accidents in the U.K. between 1992 and 2005. This figure represents approximately 1 percent of workers killed in industrial accidents during that time period. Of the 34 cases prosecuted, there were convictions in only six or seven cases.

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There was also recognition that, except in small companies, top decisions and policies in today’s organizations are driven by multiple executives. This makes it unlikely that any senior individual would be personally responsible for gross negligence.

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MUST AN ORGANIZATION BE REGISTERED IN THE U.K. TO BE LIABLE?

Any work-related deaths that occur in the U.K. will be considered for prosecution, regardless of whether an employer is registered in the U.K.

HOW WILL CONVICTED ORGANIZATIONS BE PUNISHED?

Since individual senior managers will no longer face criminal charges, penalties rest squarely on corporations. Convicted organizations will be required to pay unlimited fines as well as to publicize their failings and how they intend to avoid similar future negligence.

WHAT SHOULD COMPANIES DO TO ENSURE COMPLIANCE WITH THE CORPORATE MANSLAUGHTER ACT?

Remember, the legislation is being enacted to punish the worst offenders. The U.K. government expects prosecutions under the Act to be rare, as an organization’s conduct must fall far below “what could have been reasonably expected” before it will initiate a case.

The law does not require organizations to comply with new regulatory standards. Still, many companies are using it as an impetus to review the policies and practices they have in place today — and to identify areas for change and improvement to ensure that they meet their current legal duties.

FIRST: LEARN ABOUT THE CORPORATE MANSLAUGHTER ACT

Many corporate attorneys have already examined the new legislation and are working with their organizations to understand implications of the Act. Information is also readily available to the public. The U.K. Ministry of Justice has a number of guides — as well as an RSS feed dedicated to the topic — available on its Web site (http://www.justice.gov.uk/guidance/manslaughteractguidance.htm). A number of media outlets have also published information about the Act. (See partial list of resources, below.)

SECOND: ASSESS YOUR CURRENT SYSTEMS AND PROCESSES FOR MANAGING SAFETY

A company’s duty of care applies to its

- Duty as an employer
- Duty as an “occupier of premises”
- Duty owed in connection with (1) The supply of goods or services; (2) Construction or maintenance operations; (3) Any other activity on a commercial basis; and (4) The use or keeping of any plant, vehicle or other thing.

An organization’s duty of care extends to employees on business travel and expatriate assignments, whose travel puts them generally at higher risk of harm than employees who work in a single office environment. For corporate travel, security, HR, risk and legal professionals who are responsible for a company’s duty of care to traveling employees and expatriates, the company’s travel risk management program must be reviewed as part of the assessment.

Below is a sample of travel risk management elements to consider during a self-assessment:

- **Insurance.** At a minimum, every employer should be insured for travel-related risks. This insurance protects the company from significant economic impact due to an incident. Whether self-insured or purchasing insurance through a carrier, employers typically need to quantify their travel programs to measure risk. For example, they should know how many employees travel; how often; whether they
go to high-risk destinations; if so, where they go; use of vehicles, etc. These data generally drive insurance premium costs and should help define corporate travel policies and practices.

- **Corporate Travel Policies.** Written, communicated to employees and available for review, a corporate travel policy will define who can travel, how to book trips and the approval process. A sound corporate travel policy highlights risk-related restrictions and requirements such as consequences for out-of-policy business travel; training required for travel to high-risk destinations; tools to monitor and communicate changing threats to domestic and international travelers; ground transport policies and vendors; and a list of the company’s preferred airlines.

- **Travel Management Company (TMC).** Do your employees know how to book travel with the company’s preferred TMC? What are consequences for employees who do not? (When employees book travel or accommodations without regard to company policy, it can be very difficult for the employer to track and contact the employee in case of an emergency.) Many companies restrict travel reimbursement to those trips booked through the preferred TMCs. Some provide for manual entry of out-of-policy travel into a traveler tracking system for those trips not managed by the TMC.

- **Destination Intelligence.** To stay out of harm’s way, employees need up-to-date information about the threats they may encounter during their trip. Pre-trip information about the intrinsic threats (security, health, weather, transportation) of a particular location is important — as are updates to changing situations as they unfold. Travelers and expatriates need timely, actionable information before, during and even after a trip — to help keep them safe while away from the home work site and to help them react quickly if help is required.

- **Airline Safety.** In 2006, the European Union (E.U.) first published its “Black List” of unsafe airlines, those airlines prohibited from flying or restricted in their flights within European airspace. While the Black List is specific to the E.U., many airlines on the list operate outside the E.U. Companies and employees have ready access to this airline safety information. And while knowing about unsafe carriers can ultimately reduce the severity of airline incidents, it also increases corporate liability for employers who know — or should have known — about the risk before permitting employees to travel on unsafe airlines.

- **Hotels.** In a preferred hotel program, a company negotiates favorable rates with specific hotels and then asks or demands that employees stay at these properties. Such practices are a standard component of corporate travel programs, although mandating hotel choices can expose employers to greater liability if something goes wrong. It is important to take into account safety and security factors when selecting hotels. Information such as presence of hard-wired smoke detectors in every guest room, adequate emergency lighting, locking devices on windows and doors and even crime in surrounding neighborhoods, is generally available from the hotel chains providing your lodging.

- **Number of Employees on a Flight.** One way to contain corporate exposure is to limit the number of employees who are permitted to travel on one flight. How is the company monitoring the number of people on booked flights? Who is responsible for acting if a threshold is exceeded? Check the traveler tracking technology in place for automated notification capability. Ensure that the notification feature is engaged for those who need to know.

- **Ground Transport.** Statistically, corporate travelers are at greatest risk of fatality while driving. Check your policies and providers for transporting travelers within cities or countries with high security threats. Remember to review your policies regarding driving following a long-haul flight,
when travelers are most likely to be fatigued behind the wheel. Some companies are implementing taxi or limo services to drive employees home after a long business trip.

- **Hotlines.** Despite the best preparation, even the seasoned traveler may find him/herself in trouble on the road. Each traveling employee, expatriate and expat family member should know whom to call if something goes wrong. Most companies have multiple response vendors — for medical assistance, security evacuations, kidnapping response and IP theft. Many companies, though, are consolidating their response under one global hotline so their employees are not left wondering which phone number to call in time of need. Hotline staff should be equipped with your company’s unique protocols and vendor information, engaging a response appropriate to each caller’s needs and the company’s policies.

- **Benchmarking for Standard of Care.** Duty of care does not define specific travel risk management policies for organizations. It does, however, consider “standard of care” — the litmus test of comparing the policies and procedures of one company against those of its peers in the industry. If peer employers are capturing itineraries for traveler tracking, providing pre-trip information, keeping travelers and expatriates aware of new risks and providing emergency assistance support, any employer who is not doing the same is putting itself at risk. Consultants may be hired to conduct a formal benchmarking. The National Business Travel Association (NBTA) Foundation has also introduced a Travel Risk Management Maturity Model (TRM3), developed by iJET International, to collect benchmarking data across industries. At a minimum, organizations should be informally comparing their programs to their peers, to ensure that they are keeping up with the standards being set in their industries.

THIRD: **CHANGE, TRAIN AND COMMUNICATE**

Alone, even the best travel risk management policies are not enough to meet the duty of care requirements assumed in the Act. The policies must be widely communicated, accepted and followed across the enterprise.

Corporate travel policies are often covered as part of a new employee orientation and available on a company intranet. Changes to policies will need to be communicated to employees more than once for them to be remembered. Effective change communication typically involves more than one outlet, as well. Emails, employee newsletters, posters in common areas, and voicemail messages highlighting the new policies can all be effective, depending on the communication channels that work best in your organization.

To be effective, the changes must also be “baked in” to the travel booking and confirmation process. It should be easy for everyone involved in your corporate travel program — employees, managers, corporate travel managers, security personnel, travel management company, etc. — to do the right thing, every time.

In a nutshell, the Act does not require new or different corporate travel risk management policies or practices. But the new law is prompting successful organizations to assess and solidify or adjust across the enterprise the corporate travel policies and practices they have in place.
WHERE CAN I FIND MORE INFORMATION?

There are lots of places to learn more about the new Act, including the government Web sites and recent news articles listed below:

GOVERNMENT

- **U.K. Ministry of Justice.** This Web site has information about the Act and documents providing guidance about which organizations are covered, the type of incident to which the law applies and the test that will be applied in court.
  http://www.justice.gov.uk/guidance/manslaughteractguidance.htm

- **Health and Safety Executive (HSE).** The Health and Safety Commission is responsible for health and safety regulation in Great Britain. The HSE and local government are the enforcing authorities who work in support of the Commission. HSE has dedicated a section of its Web site to educate the public on the Act. The site includes an FAQ, HSE internal guidance on investigation of work-related deaths, downloadable documents and links to the UK Ministry of Justice site.
  http://www.hse.gov.uk/corpmanslaughter/index.htm

MEDIA

- **Business Travel News.** “Buyers Prepare to Face New Liability from U.K. Corp. Manslaughter Law” (Feb. 28, 2008)

- **Continuity Central.** “Corporate Manslaughter Act Enforcement Should Move Business Continuity 'Human Factors’ Up in the Agenda in the UK.” (Oct. 12, 2007)

- **HR Zone.** “Corporate Manslaughter: Driving forward a duty of care.
  http://www.hrzone.co.uk/cgi-bin/item.cgi?id=180141

- **PersonnelToday.com.** "Corporate manslaughter: legal Q&A". (Aug. 6, 2007)

- **Strategic Risk.** “Guidance on UK Corporate Manslaughter Act published.” (Oct. 15, 2007)
  http://www.strategicrisk.co.uk/story.asp?storycode=366732

This paper is provided for informational purposes only and does not constitute legal advice. Companies are advised to consult with their own legal and insurance professionals to determine their potential liability under the Act and the appropriate actions to take to mitigate such liability.
IJET INTERNATIONAL AND TRAVEL RISK MANAGEMENT

iJET has been a leader in travel risk management for years. The company has a proven suite of services designed to strengthen multinational organizations' managed travel programs, including:

- **Global Intelligence Center**: Available via intranet or Internet, this online intelligence database provides continuously updated travel advice and destination intelligence for hundreds of countries and cities around the world.

- **Worldcue® Travel Risk Management**: Combines 24x7 Travel Intelligence® with traveler tracking and communication technology that relates threats to traveler itineraries and profiles, automatically notifying you when travelers may be in harm’s way. Worldcue helps organizations monitor and assess global threats to their travelers, expatriates and family members; automatically track and communicate with employees; and deploy an appropriate response anywhere in the world at a moment’s notice.

Worldcue Travel Risk Management may also include:

  - **Personal Traveler Web Sites**: Informs traveling employees about relevant threats before, during and after their trips. Personal Traveler Web Sites also provide personalized Travel Intelligence® based on itineraries; personal profile and contact information; and archived trip histories for future reference.

  - **Worldcue® Airline Monitor**: Notifies travel and security managers of trips booked on airline carriers that do not meet minimum standards of operational safety. iJET’s intelligence team and transportation experts monitor and analyze information on more than 350 airlines, including large commercial scheduled passenger airlines and a number of smaller and charter passenger carriers, to determine risk ratings.

- **Worldcue®24**: This 24x7 emergency hotline service is capable of responding to a broad array of corporate emergencies through a single contact point from anywhere in the world.

- **World Pandemic Monitor**: Subscribers of iJET’s World Pandemic Monitor service receive mission-critical health intelligence, including key events and developments worldwide; insight into other organizations’ pandemic preparedness; research; trends and country assessments.

iJET has also published two relevant white papers, available for FREE by contacting info@iJET.com or visiting the iJET Web site (www.iJET.com).

- **Travel Risk Management**: Travel Risk Management (TRM) means much more than reacting quickly and efficiently to events as they happen. In fact, only one component of an effective TRM program is reactive. This white paper defines the components of a sound travel risk management program, as well as the legal imperatives driving corporations to implement them.

- **Travel Risk Management Maturity Model™ (TRM3™)**: TRM3 is an innovative framework enabling organizations to assess their travel risk management programs and benchmark against others in the marketplace. This white paper describes the TRM3 and provides a self-assessment tool for corporate travel managers to assess their managed travel programs.

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