

GLOBAL BOARDROOM RISK SOLUTIONS FOR GROWTH COMPANIES

I am delighted to introduce our Global Boardroom Risk Solutions to you.

K&L Gates brings together a team to work collaboratively with you to identify, mitigate, and respond to legal risk in all its various forms.



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“The first priority of management is ensuring survival of the business.”

— Peter F. Drucker, “Managing in Turbulent Times” (1980)

The key point of this quote is that survival is a “first priority”, and not a subsidiary priority to driving revenue growth, creation of profit, or promoting innovation at all levels of the company. Directors are required to scan the horizon for risks to the business and ensure that the business is equipped, ready, and capable of withstanding the shock waves. Over the last 40 years, this idea has manifested in laws, regulations, and codes of conduct around the world, and all of these impose upon directors the responsibility to assess risk continually.

In dealing with a significant number of the largest domestic and international internal investigations arising from crises in the last few years, K&L Gates has discerned some trends which will not provide much comfort to directors. First, the day of the one issue, one jurisdiction crisis is gone. An issue can also morph and evolve, either domestically or internationally, to leave the organisation having to deal with different regulators and different enforcement agencies on many fronts. Second, risks bleed into each other and compound. Multiple regulatory and enforcement agencies raising multiple issues in multiple jurisdictions, very often in relation to a single set of facts, are an increasingly common feature of crisis management.

To assist in dealing with these issues, we have developed a multidisciplinary product we call **K&L Gates Global Boardroom Risk Solutions**. It has been designed to provide organisations and their senior management with synchronised legal advice (in many circumstances bringing with it the protection of legal professional privilege) through every twist and turn of the risk assessment process and during the interface with regulators and enforcement agencies.

I hope that this booklet gives you an insight into the product and how it could be of use to you and your business. Please contact me, any of my partners mentioned, or your usual K&L Gates contact to learn more.



OUR GLOBAL BOARDROOM RISK SOLUTIONS
SERVICE SAVES YOU MONEY AND PROVIDES
PEACE OF MIND TO BOARD DIRECTORS, GENERAL
COUNSEL, AND RISK OFFICERS. ENGAGING
WITH US CAN PREVENT RISK INCIDENTS FROM
OCCURRING IN THE FIRST PLACE.



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Why is managing risk such an important issue for boardrooms?

Board directors have found their conduct being subject to even greater degrees of scrutiny by potential investors, private equity houses, regulators, authorities, activist shareholders, liquidators, and the media. Where major incidents have impacted businesses, whether a fraud investigation, a regulatory infringement, allegations of anticompetitive behaviour, accidents, or data breaches, board directors have frequently found their positions untenable. On occasion, they have been personally implicated in time-consuming and expensive investigations and even criminal prosecutions. In today's climate, board directors as a whole need to ensure that corporate risks and exposures are addressed head on to ensure that the company's (and consequently their own) best interests are properly protected and that their businesses thrive in the new environment.

Any organisation can be faced with a significant crisis, and K&L Gates has been involved in advising corporate clients on many of these issues.

How we can help you?

We advise on all aspects of legal, regulatory, and compliance risk or any combination of risks that can affect an organisation and its board. From fraud, corruption, and employment and workplace safety to corporate governance, competition issues, and cyber risks, our firm can bring great insight and assistance to you. We also advise on regulatory and criminal investigations and insurance coverage issues. Our advice can cover domestic and international issues.

Our advice falls into two categories: risk mitigation and risk response.

- **Risk mitigation** advice includes identifying danger hotspots and helping you to tackle them; reviewing internal procedures, guidelines or policies; and providing training to teams.
- **Risk response** advice includes insight on responding to emergency situations such as dawn raids, environmental incidents, criminal investigations, or data breaches, as well as helping to maximise recoveries from insurers, which in many instances will cover our own legal costs.

We know that each company board has different needs and issues, and accordingly our service is bespoke rather than one-size-fits-all. We tailor our Global Boardroom Risk Solutions service to the specific requirements of an organisation.

How is the service priced?

For specific risk mitigation items, such as a review of a policy or procedure or the delivery of a training session, we can potentially work to an agreed fixed fee arrangement (once we have seen the documentation and have been able to scope the requirement).

Risk response advice lends itself more to hourly billing, although we would be willing to provide estimated costs based on possible scenarios as well as ongoing visibility on fees.

How is insurance relevant?

Organisations insure many of their risks, e.g. directors & officers' liabilities, political and economic risks, and cyber or environmental issues. Not all law firms have an insurance capability and those that do typically represent insurers, which means they are hampered by commercial or actual conflicts of interest in acting for policyholders. We can provide independent reviews of your insurance policies and programmes, and, when incidents occur, we can help you in maximising recoveries from insurers, thereby mitigating the legal costs that are being incurred in other areas.

How are we different to other advisers?

Accountancy firms, risk consultants, environmental consultants, and a myriad of management consultants all advise on risk. Not all of them will cover all the bases we do. Few are able to offer a fully integrated service, and none of them are able to provide you with the benefit of legal privilege, which comes in certain circumstances from instructing a law firm.

What do you get from using our Global Boardroom Risk Solutions service?

In the risk mitigation context, our Global Boardroom Risk Solutions service saves you money and provides peace of mind to board directors, general counsel, and risk officers. Engaging with us can prevent risk incidents from occurring in the first place. And when incidents occur, we are the firm to go to in order to resolve the problem in as cost effective and painless manner as possible in the interests of preserving the business and its reputation.

AREAS COVERED BY OUR SERVICE

On the following pages, our lawyers introduce each area of the service and give some examples of our past experience. Our lawyers work collaboratively to ensure that each aspect of a risk is considered.

FRAUD & CORRUPTION



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Christine Braamskamp

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Anticorruption compliance, advice on internal procedures, and preventative measures. Defending organisations involved in regulatory or criminal investigations and dealing with regulators.

COMPETITION & REGULATORY



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Conforming with competition laws and regulation, compliance training, and managing competition or regulatory breaches and any related investigations.

POLITICAL & ECONOMIC RISK



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Structuring investments to take advantage of bilateral and multilateral investment treaties and advice on using political risk insurance to protect against unforeseen events. Advice on risk management tools available when operating in difficult or politically unstable territories.

IP, DATA & CYBER



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Sarah Turpin

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Assistance with data protection audits and policies and dealing with data breaches, regulatory enforcement, IP protection, copyright infringements, theft of information, and other cyber crime incidents. This includes representing you in any related litigation and maximising insurance recoveries.

PRODUCT LIABILITY



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Defending organisations in relation to almost any product liability claim, resolving disputes, handling product recall incidents, and maximising recoveries under relevant insurance policies.

EMPLOYMENT & WORKPLACE SAFETY



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Mitigating the risk of time-consuming employee disputes, ensuring that employee contractual arrangements and HR and workplace safety policies comply with best practice. Providing management with training, as well as resolving disputes and managing workplace incidents.

AREAS COVERED BY OUR SERVICE

CONTINUED

ENVIRONMENT



Sebastian Charles

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Due diligence on environmental risks and liabilities, advice on regulatory compliance, assistance in developing emergency response guidelines, and managing any incidents that occur.

INSOLVENCY



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Advice in relation to potential or actual insolvency and what it means for the organisation and its directors. Guidance on how directors can be personally liable and on how to avoid liability. Preemptive restructuring advice in order to ward off insolvency.

CORPORATE GOVERNANCE



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Governance regulation, best practice, analysis of board committees, review of culture and risk management (including protection of brand and reputation), review of supply chain and procurement and advice on directors' duties, and advice on best practices and board responsibilities, as well as independent board appraisals.

INSURANCE COVERAGE



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Preemptive reviews of policy wordings to ensure adequate cover is in place, notifying claims in a way to maximise cover, dealing with coverage disputes, and ensuring recoveries from insurers. In many incidences, insurance will cover legal costs incurred in responding to the investigations, litigation, and other incidents referred to above.

While many other law firms are able to cover many of the areas of risk that affect an organisation, we do not believe that any of them can credibly cover all the aspects of legal, regulatory, and compliance risk to the same degree as K&L Gates.

OUR GLOBAL BOARDROOM RISK SOLUTIONS IN PRACTICE

- Advising a support services business on a wide range of criminal and regulatory matters. Work included conducting an internal investigation in relation to alleged improper distribution of profits between the group companies, leading on a number of internal investigations and advising on Serious Fraud Office and City of London Police investigations in relation to services for the British Government, conducting meetings with the SFO, and advising in respect of settlement negotiations with the Ministry of Justice.
- Providing high level regulatory and risk advice to a manufacturing client. We also assisted the same client with providing due diligence as required pursuant to the deferred prosecution agreements entered into by the client in the United States following an investigation by the U.S. Department of Justice and the SFO.
- Giving advice to an infrastructure business on whether employees at a subsidiary had defrauded the government. We also advised the company in relation to its operations in the CIS, the potential exposure of employees under the Bribery Act 2000, and the potential risk of use of third parties.
- Conducting an internal investigation for a client and coordinating with local counsel in Asia and South America who are interfacing with local authorities.
- Acting in relation to allegations against a client that their staff were defrauding local authorities.
- Representing a financial services business and its two subsidiaries with comprehensive training on general Financial Conduct Authority compliance and anti money laundering systems. The interactive training sessions not only focused on legal compliance, but provided practical tuition on regulatory procedures and trends.
- Advising an engineering company in relation to business in countries that may fall within the sanctions regime. This advice was given alongside a more wide-ranging global compliance review and the implementation of a global compliance programme and a document retention policy.
- Carrying out an internal investigation into conduct by an international risk and investigations company's employees during a civil claim.
- Advising an international online casino business regarding the blackmail of its employees and directors of its subsidiary companies in relation to an investigation by the Serious Organised Crime Agency and the police.
- Representing a manufacturing company exposed to proceeds of crime/bribery risk through unsupervised activities of its agent/distributor in Eastern Europe.
- Giving advice to a UK manufacturer on an investigation by the Competition and Markets Authority into a cartel activity. We are acting in relation both to the civil investigation and the criminal investigation involving the CEO of the company.
- Acting for an international business in relation to a cartel investigation in Poland.
- Dealing with an arbitration under English law, seated at the London Court of International Arbitration, involving claims for negative declarations, counterclaims for indemnities arising from alleged breaches of warranties under sale and purchase agreements through which clients purchased Southeast Asian mining assets.
- Representing an operator of health care facilities in assessing and negotiating the terms of its cyber and professional liability insurance programme.
- Advising one of the largest global chemical companies in structuring and negotiating the terms of its cyber insurance programme.
- Acting for a cloud-based, intelligent supply chain technology company in structuring and negotiating the terms of its cyber insurance programme.



The **percentage** of companies that say they now have an explicit focus on managing strategic risks.¹

The **percentage** of business executives that do not believe their risk management programme supports their ability to develop and execute business strategy.²



^{1,2} Source: "Exploring Strategic Risk," Deloitte, 2013

OUR GLOBAL BOARDROOM RISK SOLUTIONS IN PRACTICE

CONTINUED

- Securing the dismissal of over 240 claims involving alleged exposures to volatile and semi-volatile organic compounds related to foreign refining operations.
- Representing a medical manufacturer in various personal injury matters involving claims of negligence and breach of warranty.
- Giving advice to a fashion business in connection with allegations that a senior member of staff had set up and begun operating a competing business while still employed by the organisation.
- Acting for a large telecoms business on the termination of employment of senior executives in the United Kingdom.
- Providing advice to the administrators of a major independent retailer, including renegotiating and completing a sale of the majority of the stores.

- Advising a UK listed company in relation to their operations in Moscow-Cyprus and London. The matter involved police raids, 'mafia' threats and an investigation by the UK Serious Fraud Office.
- Acting for numerous policyholders that have had coverage denied on the grounds of late notification or non-compliance with claims notification provisions.
- Dealing with a number of claims recently where insurers have provided a "shopping list" of coverage defences when denying policy cover. In one recent case involving a financial institution, we ultimately succeeded in recovering approximately £11m from insurers, which represented a significant proportion of the insured's loss in the face of considerable resistance from insurers.

From fraud, corruption and employment and workplace safety to corporate governance, competition issues and cyber risks, K&L Gates can bring great insight and assistance to you.



K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai
Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Moscow Newark New York
Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle
Seoul Shanghai Singapore Spokane Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises approximately 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit klgates.com.

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