

TRAVERS SMITH

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# Boardroom Risk Solutions

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# Boardroom Risk

## Risk in today's environment

Boards are subject to increasing scrutiny by regulators, consumers and their own stakeholders. The legislative direction of travel is towards greater accountability. Directors are often judged against an evolving ethical or social agenda, which needs to be reconciled with their legal and commercial duties. GCs have an ever-challenging role in anticipating legal risk.

## Types of risk

In an increasingly regulated corporate world, companies and their boards face a wide range of both legal and reputational risks, including those arising from:

- data protection breaches and cyber-crime
- corporate governance failings and ethics
- product and trade issues
- diversity, immigration and employee issues
- regulatory infringements
- financial distress
- fraud, corruption and tax evasion
- anticompetitive behaviour
- pension deficits
- environment and safety

## Why it matters

Taking calculated risks is part of business – but the quality of the calculation is key. A crisis, investigation or whistleblowing, if not properly handled, can ruin reputations and brand. Demands on management time and goodwill can get out of control if not properly managed. Speed of reaction is often critical, but false starts must be avoided.

## How Travers Smith can help you

We can help you identify, mitigate and respond to legal and operational risks in their various forms, through:

- **Risk mitigation** - reviewing internal procedures or policies; preventative counselling; and providing you with focused training;
- **Responding to a crisis** – from an environmental or safety incident right through to shareholder activism and financial distress.

## The Travers Smith approach

We aim to build long-standing, close relationships with the companies we work with, often advising throughout the full life cycle of a business. We strive to become trusted counsel in the boardroom. We provide day-to-day advice to a portfolio of over 100 listed company clients – from FTSE 100 through to AIM – and an even greater number of unlisted clients. This helps us understand our clients and their businesses and allows us to tailor our risk advice to suit them.

## Global solutions

We deliver coverage of both domestic and international issues. To the extent local law advice is needed, we have always favoured “best friends” relationships with other top quality independent law firms over a collection of satellite offices. They form a carefully chosen network which shares our specialist strengths and focus on providing high quality legal advice. Likewise, we have invested time in building strong relationships with leading consultants and industry experts. Board level issues need experts, not generalists, who can respond without delay.

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# Representative Work

**Investigations & Regulatory Defence:** advising the Oversight Committee of the Bank of England in connection with its investigation into the role of Bank officials in relation to conduct issues in the FX market.

**Activism:** advising a quoted PLC on its successful defence of a requisitioned EGM, preserving listing and obtaining high court injunctions and judgments in support of recovery of a key asset sequestered from a Mozambique subsidiary.

**Cyber breach:** advising a large UK online retailer following a malicious cyber-attack and ransom requests over its customer database including: liaising with the forensic investigation team; the police and the Information Commissioner; and advising on post-incident analysis and compliance strategy.

**Criminal:** defending a multi-national logistics company in major Crown Court prosecution following worker fatality and wider health and safety failings.

**Trade:** investigating and successful regulatory defence of an IT supplier following systemic breaches of UK sanctions and export controls.

**Antitrust:** advising on a high-profile European Commission antitrust investigation into the conduct of sales employees, including coordinating advice on related investigations in the US and other jurisdictions.

**Immigration and ABC:** conducting an extensive independent investigation for a UK-based company into alleged breaches of immigration law, bribery and corruption in relation to a large number of non-EEA nationals.

**Restructuring:** advising a large multinational insurance company on the UK aspects of an extensive multiphase restructure of worldwide senior management, including the associated employment law risks and a workforce collective consultation exercise.

**Environment:** advising a major US asset manager following a group-wide failure to comply with UK carbon law; running successful settlement negotiations with UK regulators.

**Products:** advising a Fortune 500 medical devices manufacturer on cross-border product recall and regulatory safety notification.

**Tax:** advising the boards and tax directors of numerous international businesses on multi-million pound tax disputes, including corporation tax matters, enquiries into senior executives' tax affairs and negotiation of settlement agreements under the EBT settlement facility.

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# Boardroom Risk Solutions

## INCIDENT & RISK MANAGEMENT

- Developing robust compliance and emergency response programmes
- Crisis and incident management
- Defending clients against criminal and regulatory actions and investigations;
- Managing environmental, safety and wider social risks and liabilities
- Brand and reputation management

## PRODUCT & TRADE EXPOSURE

- Product liability, safety and non-compliance claims
- Supply claims management
- Protecting market access and managing the regulatory landscape
- Handling product recall incidents and maximising recoveries under relevant insurance policies
- Navigating the complex web of UK and EU export controls and trade sanctions

## CORPORATE GOVERNANCE & ACTIVISM

- Governance regulation and best practice
- Corporate culture, directors' duties and reputation protection
- Managing board level difficulties and succession
- Dealing with hostile shareholders/approaches

## FINANCIAL DISTRESS

- Potential or actual financial difficulty: guidance for the organisation and its directors
  - Guidance on directors' liability management
  - Pre-emptive restructuring advice in order to ward off insolvency
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## **WORKFORCE & IMMIGRATION ISSUES**

- Gender pay gap reporting and diversity issues
- Right to work and immigration investigations
- Providing management with training, resolving disputes and managing workplace incidents
- Solutions to defined benefit pensions deficits
- Whistleblowing

## **IP, DATA & CYBER BREACHES**

- Dealing with data breaches
- Regulatory enforcement
- IP protection
- Theft of information and other cyber-crime incidents
- Managing litigation and maximising insurance recovery
- Data protection audits and policies

## **INVESTIGATIONS & REGULATORY DEFENCE**

- Anti-corruption, sanctions and environment, health and safety
- Internal procedures and preventative measures
- Defending organisations involved in regulatory or criminal investigations
- Dealing with regulators

## **DIRECTOR LIABILITY**

- Breach of 'fiduciary' type duties
  - Concurrent criminal liability where consent, connivance or neglect
  - Liabilities upon insolvency
  - Responsibilities and risks of nominee directors
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## TAX – REPUTATIONAL RISK

- Advising on tax reputation management, including tax authority and media enquiries and the mandatory and voluntary publication of tax strategies
- Assisting clients with early stage investigations by tax authorities and compliance with tax authority information notices and requests
- Advising on the application of the disclosure of tax avoidance scheme regimes and the general anti-abuse rule
- Managing risk associated with the new corporate criminal offence of failing to prevent the facilitation of tax evasion

## COMPETITION/ANTITRUST

- Breach investigations and advice on subsequent strategic approach/leniency
- Handling investigations by competition regulators, including dawn raids
- Advising on risks of damages actions
- Compliance audits and compliance training

*“An absolute delight to work with in difficult circumstances”*

**Chambers UK**

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*“...expertise in regulatory and risk management issues, advising clients on sustainability, corporate governance and ethical investment.”*

**Chambers UK**

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