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Risk & Investigations

Financial and corporate crime, regulatory enforcement and compliance

2018

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A changing landscape

The risk and regulatory landscape is becoming more complex and requires greater investment of time, resources and skill in order to develop a formal, effective and transparent response.

Fraud, corruption, tax evasion and money laundering are issues high on the public, political and enforcement agendas around the world. Regulatory and trade bodies' more stringent restrictions and transparency requirements aimed at curbing corporate crime, together with improvements in corporate internal controls, have led to better internal reporting of concerns. This can generate a new series of challenges in terms of appropriate analysis and investigation of reported issues, and the institution of required disciplinary or other measures to ensure that the right lessons are learned.

From the set-up of appropriate governance controls and aligning finance and risk functions, to revising data collection procedures and developing robust crisis management plans, it is clear that the historical approach to dealing with governance, risk, compliance and investigations is no longer adequate. Given the potentially far-reaching criminal and financial implications, you need a legal team that will not only handle your most sensitive and critical affairs, but can appraise risks based on years of experience with the issues specific to your sector, consider all the commercial and reputational concerns requiring protection and navigate local legal requirements.

Our Team

Our Risk & Investigations team works to safeguard your business and ensure that your organisation can readily demonstrate a consistent and defensible compliance position to regulators, prosecutors, customers and other key stakeholders.

Bringing together advisors across the major focus areas for your risk and compliance strategy, including bribery and corruption, money laundering, fraud, competition, sanctions and trade law, data protection and security, environmental, health and safety, and regulatory, we assist in all stages of the compliance lifecycle:

- reviewing processes, policies, systems and controls across your entire operation;
- risk management and building effective compliance programmes and corporate cultures;

- assisting clients with internal investigations following whistle-blowing or the internal detection of irregularities; and
- managing raids and investigations by the authorities and, where possible, concluding negotiated outcomes or defending proceedings.

Clients trust us with their most sensitive, difficult and business-critical issues because we have the expertise, scale and geographic coverage to advise not only on their day-to-day operations, but their wider strategic objectives, across multiple jurisdictions.

Risk and compliance advisory

We help clients with their overall governance framework and implementing improvements to their systems and controls.

Good governance promotes better decisions and encourages accountability. It dictates the shared philosophy, practices and culture of your company and can serve to enhance your public image, while improving stakeholder confidence and your ability to self-police. We advise on implementing compliance and risk management policies to facilitate day-to-day decision-making. We also assist in developing governance processes to mitigate risk or wrongdoing and promote your corporate culture.

Prevention is better than cure. We understand that in business, compliance does not come in neat boxes and an ethical corporate culture cannot be bought 'off the shelf'. Our experts will work with you to devise compliance strategies that fit your business needs and cultural environment and help you embed them across your business.

Our experience spans all key categories of risk. We work with clients to identify and manage risk, including auditing relevant areas of the business and identifying potential problems.

We can assist you scoping and implementing remedial action. However robust your compliance program, something might give rise to an investigation of internal practices, or trigger the launch of a formal investigation by regulatory authorities. Should an area of concern be identified, we can assist you with developing a suitable approach.



Case studies

Competition compliance for a large consumer products company

Issue: We were asked by a large consumer products company to advise on competition compliance issues. The company held a large market share in certain product lines and had previously been under scrutiny by competition authorities. Whilst many personnel had a good understanding of the basic competition law risks, there was a high staff turnover and there was a need to integrate competition law compliance into the day-to-day business operations of the client.

Solution: We worked with the client focusing on key risk areas to produce a set of tailored frameworks which applied to certain business operations. Not only did they provide guidance on how to ensure competition law compliance, but importantly they set out how internal decision making should be conducted to ensure competition law risks were minimised. These frameworks were accompanied by training, and subsequently, we conducted a series of focused audits to check whether the frameworks had been successful and identify any remaining compliance risks.

Benefit: By tailoring the frameworks to the key risk areas identified and considering carefully the internal decision-making processes, we were able to integrate compliance advice into a practical risk management approach providing the client with comfort that the competition law risks were effectively managed.

Risk management for a multi-national technology company

Issue: A rapidly growing technology company with operations around the world approached us to assist them in establishing internal guidelines and controls to ensure that they did not breach sanctions and money-laundering rules. The client had a complex internal structure, and had diverse supply chains which needed careful consideration.

Solution: We worked with colleagues in various CMS jurisdictions to provide coordinated multi-jurisdictional advice identifying the risks that the client faced, together with recommendations of the practical steps needed to mitigate them. The advice was accompanied by training to the senior management team.

Benefit: By reviewing two compliance areas simultaneously we were able to make efficient and coordinated recommendations which could be readily plugged into business operations, avoiding the need for parallel compliance procedures.

Coordinating policy advice across 30 jurisdictions

Using the 'one point of contact' approach increasingly demanded by our clients, the CMS team helped coordinate a review, overhaul and implementation of a global policy for a major international pharmaceutical company, which covered anti-corruption and transparency policies in 30 jurisdictions. CMS partnered with law firms in jurisdictions where we do not have a presence to provide seamless, high quality service in every country the client needed it.

Getting the scope right at the outset: We worked closely with the client to define the scope of work in each jurisdiction and developed a questionnaire containing the key issues perceived to be most important for the client. This was circulated to all relevant jurisdictions in order to obtain a unified estimate of the project scope.

Coordination across borders: Once the scope was agreed with the client we coordinated the review of the global compliance policy and code of conduct in order to reflect the local legislation and industry codes in all jurisdictions involved. This included a regulatory overview of local transparency requirements. As part of this policy review all documents were amended, where necessary, in the local language. The output from this process was a comprehensive, coordinated schedule of advice to the client in all jurisdictions, plus the tailored compliance policy and codes of conduct.

Project management support – single point of contact: The project was coordinated by an associate in each of our offices supervised by a partner, each with relevant sector expertise, which ensured the advice was commercial and cost effective. The 'one point of contact' allowed the client to benefit from the unified CMS approach in all jurisdictions and to receive the same structure and quality of advice delivered by CMS and correspondent law firms as well as time and cost efficiency in all aspects of the mandate.

Follow-up and knowledge sharing: All additional questions were coordinated by our central team and dispatched to the best specialists in each jurisdiction where the best possible resource model was applied.

To support the project roll-out CMS assisted the client in delivering training to all its compliance officers.

Investigations and enforcement

Our broad investigations experience allows us to guide clients through investigations of all kinds, deal with regulators & other authorities and achieve outcomes that mitigate risks and protect clients' corporate reputations.

Internal investigations. There are many reasons why internal investigations may be necessary: a company suspects the existence of internal irregularities; a breach has come to light that might need to be disclosed to a regulatory authority; events in the industry environment prompt a review of compliance. We structure investigations carefully to maintain the integrity of the investigation and ensure the company's wider interests are protected. Our expertise and international coverage enables us to mobilise specialist teams quickly and to understand the differences between jurisdictions in matters such as legal privilege, data protection, data transfer and employment issues, which can expose clients to greater risk if not handled correctly from the outset. Essential to CMS' offering is our dedicated technology support in CMS Evidence. They have the most up-to-date techniques, knowledge and software to manage and review significant volumes of data and find the 'smoking guns' (see CMS Evidence investigations service on page 10).

External investigations. Regulatory and criminal authorities have different powers. It is crucial to know who the inspectors are, what they can do and what sort of response your business must make. Through our extensive dealings with regulators & enforcement authorities in a variety of sectors, we know what they are looking for from firms facing scrutiny & how best to respond to their demands. We have supported clients through many types of external investigations, including dawn raids and have first-hand experience of how they are run. Dawn raids are generally just the start of the process though and authorities' subsequent investigations can take up valuable management time over a period of months or even years. We will advise you on how to minimise the impact of investigations, defending your organisation and its executives/board members against legal enforcement and the rising impact of fines, penalties and business disruption.

Case studies

Response to investigation and liability exposure advice concerning allegations of bribery

Issue: The client asked for urgent legal support in three jurisdictions to: (i) assist it to respond locally to company-initiated investigation findings from external forensic accountancy investigators that inappropriate payments had been made to government officials in a CEE country; and (ii) assess the risk of corporate/personal liability exposure under (a) the UK Bribery Act and (b) the US FCPA.

Solution: Our CMS office in the relevant CEE country handled the local anti-corruption and employment responses to the uncovered factual findings advising on anti-corruption risks and responsibilities under that country's laws as well as on the employment law implications and options for the group and the local company. Our office supported in handling the removal of the relevant local employees and management implicated by the investigation.

CMS London advised on the Bribery Act implications working with the client's ethics and compliance lead. CMS London also sourced equivalent advice from US counsel regarding potential FCPA exposure for the corporates within the group and for senior management individually.

Benefit: The client was able to source coordinated, local, specialist advice covering 3 countries and assessing extra-territorial implications via a 'one-stop shop' approach led by CMS in CEE. This helped the client quickly formulate its compliance and employment strategy for addressing the local non-compliance in CEE with the benefit of being able to see the 'bigger picture' implications for the local business, for the group generally, as well as for senior managers across the entire international operation.

Criminal corruption investigation advice and settlement

Issue: The client came to us due to concerns its existing (non-CMS) legal team, who were conducting an internal investigation into possible corruption, was no longer providing services to and for the benefit of the client. Instead, the investigation had taken on a life of its own (at escalating cost) and the legal team were not keeping the client's management informed. The client was uncertain of its position, what it was able to do, whether it should be self-reporting to the authorities and how it could resolve the problem quickly and at minimal cost.

Solution: We advised the client on their rights and obligations in the context of allegations of criminal wrongdoing and assisted them to restructure the external legal team and reporting lines, as well as advising the client on the creation of a board sub-committee to manage the process and any issues arising. We also advised the client on instructing the legal team to produce a detailed investigation plan with options, time-lines and details of the work (and cost) anticipated. We prepared all corporate documents to facilitate this.

Benefit: By spending time with the client to explain to them the process of a criminal investigation and their rights and obligations we gave the client comfort regarding the process and empowered them to manage it more effectively. We assisted the client to regain control and ensure the investigation team could conduct a proper and uncompromised investigation under legitimate supervision from a fully informed management committee. As a result of this and other advice, the client was able to settle one aspect of the problem with a development bank involved in the underlying issue, in what was one of the first settlements of its kind. The client has since reached a settlement with the Serious Fraud Office, resulting in the payment of a civil fine, with no criminal penalties.

Critical and time-sensitive internal investigation

Issue: The client came to us with an urgent request to conduct an internal investigation into accounting errors that it was concerned may have been deliberate mis-statements carrying criminal implications. The errors related to the accounting treatment of payments and receivables arising from factoring agreements entered into between the client's captive factoring entity and various entities within its group over a number of years. The implications of the errors were that there could be a material mis-statement in consolidated group accounts of \$ hundreds of millions. Due to an accounting deadline, the client required final advice within weeks.

Solution: We immediately mobilised a team in London over the Christmas/New Year period of a dozen fee earners to conduct a time-critical root-cause analysis of the accounting errors. We conducted 26 interviews with 23 individuals, including the factoring entity's then external legal advisers. We reviewed thousands of contemporaneous documents within CMS Evidence and liaised with another CMS office to obtain second opinion advice to confirm the correct position under local law. We conducted daily update calls with the client's global and European GCs. We provided the client with preliminary advice in time for its accounting deadline and ultimately prepared a detailed fact-finding report and conclusions (including legal advice and lessons learned) for the board, within one month of our initial instructions and within the relevant deadline.

Benefit: We advised the client on the root-cause of the accounting error and highlighted the opportunities that had been missed to discover the issue. The positive outcome of the investigation informed the way in which the accounting treatment was rectified. This investigation demonstrated CMS' ability to respond rapidly to critical client requests, mobilise substantial cross-jurisdictional teams when required at difficult times, efficiently co-ordinate its team and work effectively with local lawyers to conduct a thorough and uncompromising investigation, even in a limited timeframe.

CMS Evidence investigations service

Our CMS Evidence service is a cost effective electronic evidence gathering and review capability that provides support for the collection, hosting, forensic analysis, review and distribution of evidence to or for our clients – using artificial intelligence, where appropriate, to help speed up the process and ensure consistent assessment quality.

Gathering evidence during the investigation and disclosure stages of contentious matters can often be a costly and complex process.

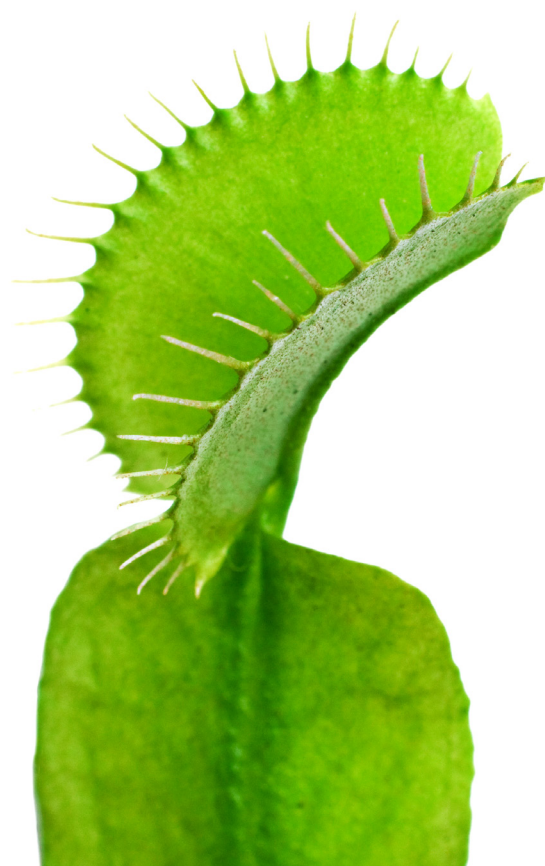
It is essential that the analysis happens in a thorough and consistent way and the critical information can be accessed quickly and efficiently. With the increasingly international nature of this work comes the added challenge of managing reviews in multiple languages. To simplify this process and provide a cost-effective alternative for gathering and reviewing evidence electronically, CMS has created CMS Evidence, a service managed by technical experts with decades of front-line experience in forensic data gathering and review, which supports the hosting, forensic analysis, review and distribution of electronic and physical evidence.

CMS Evidence gives our clients and lawyers fast access to critical information and can result in over 50% in cost-savings compared with the historical outsource model.

As the service is part of CMS, there is no need to introduce external suppliers during the early stages of a dispute (which can add a layer of bureaucracy and delay) and it delivers a fully integrated team with a consistent approach to evidence gathering and analysis. Services are billed to our clients as a mix of technical consulting time and fixed fees based on the volume and number of months that data is hosted. Unlike other external providers, electronic documents can be loaded straight into CMS Evidence at no data volume charge. Our specialist data managers will prepare and load the data and their competitive rates ensure minimal processing fees.

Market-leading technology – CMS has invested in the most advanced in-house investigation technology of any UK law firm, meaning our specialist lawyers have the capability to cut through electronic data to get to the key evidence as quickly as possible and at less cost to the client. Amongst the tools we use is Brainspace, an AI-driven data visualisation tool, allowing our teams to complete the data analysis aspect of an investigation and get to the key evidence much quicker than could otherwise be achieved by more traditional electronic review methods. For more extensive, traditional reviews, CMS Evidence uses the Relativity review platform to filter and review electronic evidence. Both tools facilitate searching and reviewing in many different languages.

When combined with our Legal Services Unit, to provide a cost-effective review team, and CMS Collaborate, to provide an online document portal, CMS Evidence can provide a superior solution for your forensic requirements.



Case studies

Protecting the competitive advantage of a global savings and investments business

The client was faced with the loss of a major fund management team to a rival with £4bn in managed funds at stake. A key part of the success of the fund hinged on proprietary software acquired at significant expense by the client (as the departing team's new employer would need to create its own software from scratch). The client noticed some unusual email patterns from one of the departing support team members and asked CMS to investigate.

After a two-week, round-the-clock sophisticated data search exercise undertaken by the CMS Evidence team (working in tandem with the client), data emerged that suggested someone was attempting to remove a copy of the software. We were able to prevent the theft of the software and assist the client in sending a strong message to rival companies that it had the technological sophistication at its disposal to unravel any attempts to breach its corporate and intellectual property.

Brainspace review

CMS Evidence received over 5TB of electronic data collected in the course of an investigation into allegations of bribery of public officials. Within a week, CMS Evidence extracted and processed all email and calendar information from the data, comprising over 900,000 documents, which were loaded into Brainspace for review.

Our specialist investigation lawyers were able to use the unique features of the Brainspace tool to quickly identify relevant documents by honing in on communications between particular individuals, focussing on particular concepts within the documents, filtering results by date ranges and using keywords. A review that could otherwise have taken weeks or months, given the large volume of documents, was completed within days. This not only represented a significant cost-saving to the client but permitted the investigation team to progress quickly to the next phase of the investigation, armed with relevant documents from the review.

Anti-Bribery/Corruption investigation

Over 750,000 emails (165 gigabytes) were loaded for review in three days. The entire data set was carved down to less than 10,000 emails and individually reviewed by our team, which included a client representative. The initial findings were communicated within seven days and the final report delivered within 15 working days. Our work was completed at less than 15% of the data management cost of a previous, similar exercise which used an external provider for data hosting and management, with the client saving nearly £100,000 over a three-week period.

Why use CMS Evidence?

- **Less expensive** than external service providers
- Part of our proposition so **no need to introduce external suppliers** to the relationship during the early stages, avoiding additional delay & bureaucracy
- **Consistent approach to evidence gathering and analysis** – more efficient for clients with multiple matters
- Ability to **access and review documents online** through a CMS portal.

“ I'd done large disclosure exercises before but this was unlike anything I'd ever seen. The enthusiasm, dedication and creative thinking we received from the CMS Evidence team was quite simply phenomenal.

Client Head of Disputes

Resources

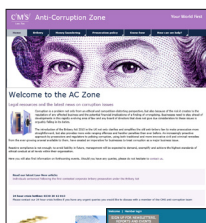
Complementary to our Risk & Investigations service, we offer a range of resources that include a flexible, secure data-sharing platform, an in-house paralegal team that helps manage high-volume and process-driven work and a series of seminars and tailored training on governance, risk and compliance issues.

CMS Collaborate – CMS Collaborate is a flexible, secure extranet platform that can be used for applications as varied as datarooms, online bundles of evidence and case tracking and reporting tools. We have implemented HighQ's Collaborate platform, which is an industry leader in the legal services sector. In addition, with over 350 active sites, we have the in-house expertise to use the platform to meet a variety of challenges for clients.

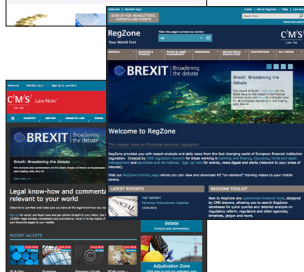
Legal Services Unit – The Legal Services Unit (LSU) is CMS' in-house team of paralegals that focuses on helping our clients and lawyers manage the process-driven or volume elements of transactions and projects in a cost-effective way. The actively-growing team has 26 members and two managers (senior qualified lawyers).

We can modify resources as required, by:

- expanding our own team if the flow of work justifies it
- using contract paralegals/lawyers
- partnering with your preferred LPO provider (CMS also has its own strategic relationship with Integreon, if you wish for us to assist).



Anti-Corruption Zone – a single source for useful legal resources and the latest news on corruption issues. Includes details of upcoming events on the subject.



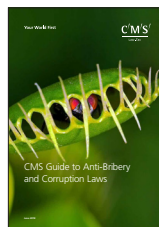
Regzone/Law-Now – A free online resource providing a wealth of materials to help regulated businesses deal with the fast-changing world of regulation in the UK and Europe.



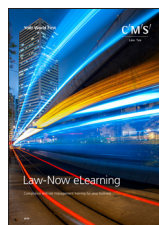
The Verdict – An at-a-glance round-up of recent developments in relation to corporate crime. Each edition combines short summaries of interesting developments in this area across our CMS network, as well as a more detailed look at a development in one particular jurisdiction.



Regulatory Crisis Scenario Guide – Guide covering a typical regulatory crisis scenario and outlining what to do in order to protect your position. This guide focuses on the investigation of conduct of business issues and enforcement action taken by the Financial Conduct Authority (the FCA) and Prudential Regulation Authority (the PRA)



CMS Guide to Anti-Bribery and Corruption Laws – assesses the laws in 34 countries and includes full coverage of the BRIC nations, as well as increased coverage in Asia (Singapore, Thailand, Malaysia and Indonesia), the Middle East (the UAE and Lebanon) and South America (Mexico and Brazil).



e-Guides – Electronic training tools for legal and non-legal client staff on a variety of issues, including the UK bribery laws and the US Foreign Corrupt Practices Act, for use as part of an anticorruption compliance programme.

Emergency Response Line – Crisis response that operates 24/7/365. If you require urgent advice, please dial 0333 20 21 010. We have the resources to respond to dawn raids and other emergencies across a number of areas including bribery and anti-corruption, competition, environment, health and safety, technology and litigation, and sanctions.

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