

# Corporate Risk and Reputation Management



*'It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.'*

**Warren Buffett**

Business is risky. And whilst awareness of the risks inherent to business activity has never been higher, organisations need also to consider their roles as good corporate citizens. This includes assessing newer risks, such as those attributable to globalisation, emerging markets and the environment.

Meanwhile, an organisation's reputation is more at risk than ever before: and communication instantly across the globe means that news hits the headlines swiftly, in some cases with lasting detriment.

Assessing the potential impact of these and the many other quantifiable risks, and planning accordingly, is a major concern for company directors. Mapping an organisation's risk profile and planning its response in the event of a crisis or high profile claim is now an essential aspect of corporate responsibility.

For most organisations the risks it faces, and its reputation, are handled internally on a day to day basis by people whose roles may include responsibility for compliance and risk management, for internal and external communications and for disaster recovery and business continuity. These roles will include responsibility for anticipating and planning for a number of eventualities, including the possibility of major 'bet the company' crises.

At Ince & Co we advise a wide range of companies on corporate risk and reputation management matters. We work with clients to anticipate and plan for the risks that their organisations face, and we help put action plans into place in the event of a crisis.

## Our experience

Ince's experience in dealing with risk assessment, crisis management and matters of reputation is founded on our acknowledged strength as a leading shipping firm, developed over more than 130 years. Today we handle and advise on an average of three shipping 'casualties' every week, anywhere in the world. Occasionally these incidents make the headlines – such as when the *MSC Napoli* grounded off the coast of Devon in January 2007, when we acted for the salvors. We also advise in other business areas: for example when the London bombings took place in July 2005, we advised Transport for London on the strategic issues they faced. Other clients we work with in this area include major international hotel groups, transport companies including rail and aviation, engineering firms, utilities and governmental bodies.

The experience we have gained in handling innumerable crises – from the immediate event, during the aftermath and until the

resolution – means that many of our lawyers have substantial and tested experience of dealing with unexpected events that impact both on businesses and on individuals. Unlike many lawyers, who only see the world in black and white, we are attuned to the nuances that need to be considered in light of a particular incident or decision. As a team that works alongside our clients when unexpected situations arise, we are experienced in reconciling the legal and the business issues, in arriving at effective and workable solutions and in dealing with responses in the glare of the public eye.

The specific ways in which we work with our clients are outlined below.

### Risk assessment

An organisation's directors are required to identify the risks to their business and ensure that relevant insurance policies, with the appropriate level of coverage, are in place. At Ince & Co we understand the internal pressures that may arise in weighing up the possible risks. We advise risk managers and others with responsibility for a company's insurance portfolio on the policy wordings proposed, the extent of the coverage and its implications. Our active involvement at an early stage of a company's risk assessment process provides assurance to directors in relation to possible future claims.

### Crisis response planning

Members of the Ince team work with clients across the globe to develop and test crisis response plans for use in an emergency. These plans delineate proposed actions and responsibilities within the organisation, and provide specific guidance on legal, insurance, reputation, communication and business issues.

### The Companies Act 2006: Directors' duties and liabilities

The Companies Act 2006 sets out a new requirement for directors: in summary, that a director should act in a way that he considers, in good faith, would be most likely to promote the success of the company and, as a consequence, for the benefit of members as a whole. The Act lists six specific factors to which directors must have regard in order to fulfil this duty. Put into practice and in relation to certain competitive strategies, conflicts of interest may arise. At Ince & Co we advise directors and boards of their best course of action within the Companies Act framework.

### Crisis management and Emergency Response service

Chambers & Partners guide to the legal profession has commented of Ince & Co: 'Its experience in handling disasters and crises around the globe is second only to the Red Cross, and rests on a 130-year track record of major energy, aviation and marine catastrophes and incidents'. Our crisis management team, which includes experienced technical managers, operates globally. In response to a crisis we are able rapidly to assemble a suitable emergency response team that will operate in any location worldwide.

Ince & Co's Emergency Response service

(+44 20 7283 6999) is available 24 hours a day, seven days a week. It provides clients with relevant expertise in the appropriate location as a result of a single phone call.

### Reputation management

It is not always the case that a crisis proves damaging to an organisation's reputation, and businesses have emerged from unexpected incidents with their reputations intact and sometimes even enhanced. Nonetheless, corporate reputations are fragile, and careful management, combined with decisive leadership, are required to minimise the damage that may impact on shareholder and stakeholder confidence. Members of Ince's team are experienced in ensuring damage limitation in the event of a crisis, including advising on media responses and the on-line environment.

### Claims

Whatever the nature of a crisis or unexpected incident, claims of many different types are likely to result. Steering a course through these whilst keeping claims/defences and reputation aligned, takes a cool head, in-depth knowledge and experience gained through many such incidents, including exposure to public enquiries and investigations which often result.

At Ince we have in-depth practical and legal knowledge of the various different type of risk transfer structures available to large companies, their captives and their re/insurers, to achieve the appropriate level of cover, security and risk management worldwide. This allows us to advise on claims and coverage issues relating to directors and officers; errors and omissions; employment; liability; property damage and business interruption, and claims arising from situations involving political risk.

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## A worldwide team

Our worldwide team of partners advises on identifying, anticipating and planning for the likelihood of risks that arise in the course of business, and in managing the reputational issues likely to arise in the event of a crisis.

Details of our UK team are given below.



**Gillie Belsham** heads the Aviation and the Non-Marine Crisis Management teams. In addition to Aviation, her broad-based commercial arbitration and litigation practice focuses on offshore and energy work. Long interested in the importance of reputation not only to the business and brand of a company, but also as a means of containing liability claims. Gillie also advises strategically within other industries, such as hotel and transport, in connection with liability, reputational and commercial issues.

Gillie is *"a pleasure to work with, someone who picks up on matters quickly and delivers excellent results."* (Chambers & Partners 2008)

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**Jan Heuvels** heads Ince & Co's international Reinsurance Group. His clients include corporates, captives as well as re/insurers advising amongst other on *"corporate risks"*, global re/insurance programmes and claims and coverage issues relating to liability, property and business interruption claims.

Jan is *"practical and able"* (Legal 500, 2009) with a *"fantastic reputation"* (Legal 500, 2008). He is also *"hugely energetic and proactive"* and *"moves quickly and assertively while listening to the client, and peers admit that he really gets results,"* (Chambers & Partners, 2008).

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**Nick Gould's** practice covers numerous areas of mainstream corporate and corporate finance work. He acts predominantly for private companies and their owners and managers. He also advises on a wide variety of corporate and commercial issues, ranging from directors' duties to corporate governance. His clients range from entrepreneurs involved in start-ups, to large multinational groups. He advises companies across a wide spectrum of business areas including specialist chemical groups, international shipping groups and media companies.

As a result of his corporate practice, Nick has been involved in advising on the corporate aspects of numerous shareholder and joint venture disputes. Nick regularly lectures on areas of corporate law and most recently on those parts of the Companies Act 2006 involving directors' duties and liabilities.

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**Jeremy Farr** has particular experience of handling liability issues arising from large engineering/construction projects in the marine and energy sectors. Many of the matters in which he is involved have insurance aspects and he has particular expertise in relation to war risks insurance, where his experience includes issues arising from acts of piracy. He advises a major British port on the legal aspects of safety in the context of crisis planning and management. He is the author of the shipping section of *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (ed. Forlin, LexisNexis 2003) and the 4th Edition of Griggs, Williams and Farr on *Limitation of Liability for Maritime Claims* (LLP 2005).

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**Stephen Askins'** primary area of expertise is dry and wet shipping, with an emphasis on Admiralty work. He acts for owners and their insurers in the aftermath of maritime incidents including salvage, wreck removal and collisions. Stephen has particular expertise in advising owners and port operators on crisis communication and dealing with the media in high profile cases. He was part of the team handling the *Prestige* oil spill and acted for salvors in the *MSC Napoli* and regularly lectures on this and general crisis management.

A ex-Royal Marine with military experience in maritime counter terrorism, Stephen co-ordinates the firm's responses to piracy and hijacking incidents. He recently advised the owners of the *Faina* during her hijacking off Somalia and speaks extensively on the legal issues arising from piracy and hijacking.

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**Joe O'Keeffe's** practice focuses on coverage issues and disputed claims arising in the marine and energy sectors. Joe has extensive experience in Hull & Machinery, builders' risks, cargo, loss of hire and marine liabilities, and in the on-shore and off-shore energy sectors he has been instructed in relation to claims arising under oil major package policies, CAR policies and BI covers. He also acts for traders and banks as well as end-users, the latter primarily engaged in the power generation industry, with particular expertise in fossil fuels and bio fuels.

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Ince & Co is an international commercial law firm which practises in seven broad strands:

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