PROTECTING GLOBAL REPUTATIONS

Supporting private clients in conflicts and disputes

Global law firm Kobre & Kim, and international strategic communications consultancy, DRD Partnership, discuss common challenges facing international private clients in complex, contested situations, and offer a checklist of actions to manage reputational risk in cross-border disputes.
A single fabricated article can have a spiralling impact on a client’s ability to carry out business as usual. To prevent a rapidly evolving hostile campaign from doing further damage and to establish a path to recovery, a carefully calibrated mix of legal and communications interventions must be activated at the earliest opportunity.
JURISDICTIONAL JIGSAW

As a rule, clients with international portfolios and footprints find it significantly more difficult to remain in control of how the truth is presented in the public domain during conflicts and disputes.

Some of this is a function of complexity and probabilities. A private client embroiled in cross-border proceedings in a dozen jurisdictions will likely end up playing ‘whack-a-mole’ with publications around the world as their opponents seek to leverage local judicial systems and media to undermine the client’s case. What’s more, allegations made in far-off jurisdictions can catch the attention of foreign authorities, such as those in the United States whose remit includes investigating cross-border conduct with an alleged link to the U.S. financial system. This attention can then compound – if investigating U.S. authorities find corroborating evidence, they may issue a Mutual Legal Assistance request to law enforcement in the original jurisdiction, instigating a local investigation where one may not have been active prior. Governments may even use foreign reports to begin building a sanctions designation case where ties to a geopolitical competitor are alleged.

Due to the same complexity, clients involved in cross-border proceedings require a broader toolbox to get their position into the public domain as there are frequently many more audiences to engage with, and to turn a complex but vital message into a digestible form to counter the activist narrative. This broader spectrum of risks may lead to a misstep, amplifying the need for high-precision strategic communications planning and legal defence preparedness. The different statutory frameworks that the client needs to navigate in multi-jurisdictional litigation create further pitfalls. Each case pursued by the client internationally needs to be mindful of how local specificities will impact their position across the entire portfolio.

UNHELPFUL CONNOTATIONS

Another potential challenge is that being associated with certain jurisdictions inevitably carries unhelpful connotations that may affect third parties’ trust in the client’s narrative. Business activity in some countries, for example, increases the likelihood that the client will face accusations of corruption, even if these have no basis in the client’s particular conduct. And it could make for a more appealing story, especially if the accusations fit into a publication’s editorial worldview. Equally, once the story involves an “offshore” jurisdiction, where many HNW individuals choose to establish corporate structures or settle trusts for many legitimate and established reasons, individuals could face pressure to detail previously private information about their history of wealth. The client’s business and personal life is then exposed to scrutiny, including by those who are motivated to cause mischief for the client or indeed who have an axe to grind.
CHECKLIST: ‘MUST HAVES’ FOR MANAGING RISK

The proliferation of risks facing HNW individuals that are involved in contentious situations necessitates a robust and active approach to reputation management. The below ‘must haves’ could help ensure that risk to client’s personal and professional life is minimised amid the turbulence of multi-jurisdictional disputes:

01 Establish a central strategic team
To coordinate actions across jurisdictions. Ensure that local interventions are aligned with your strategic objectives and avoid unintended impact on proceedings in other locations.

02 Effectively deploy specialist advisors
The challenges outlined above require professional handling, with both lawyers and communications professionals experienced in navigating these types of disputes working in tandem.

03 Introduce escalation protocols and lines of communication
Between your team and decision-makers in companies, charities or other organisations that could be impacted by scrutiny, enabling your team to respond to incoming global developments instantly.

04 Forecast scenarios
That could play out two, three, and four steps into the life cycle of ongoing disputes and consider the implications of your present actions and statements on future decision making and best-case outcomes.

05 Take a forensic approach
To allegations that could be levied against you, ensuring that you are prepared to defend against any public attacks.
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