



FORENSIC AND VALUATION SERVICES

REAL ESTATE AND CONSTRUCTION SECTOR

IDEAS | PEOPLE | TRUST



OUR SERVICES

How can we help you?

The Forensic and Valuation Services team includes leading practitioners in dispute resolution, valuations, financial crime and fraud investigations, corporate intelligence, professional negligence, and forensic technology.

DISPUTE PREVENTION AND RESOLUTION

Our dedicated and highly experienced Forensic Accounting Commercial Dispute Resolution team is committed to helping you resolve the most challenging commercial disputes, including during the course of a real estate or construction contract or in the context of a transaction.

Contractual disputes

There are many things that can go wrong in large scale and complex real estate and construction contracts. We are experienced in quantifying losses whether through contractual breach or tortious act, including:

- ▶ Quantifying lost profits as a result of business interruption, defective design, breach of contract or performance warranty, delay, or lost opportunity;
- ▶ Assisting real estate construction clients prepare and present their losses to counterparties and insurance companies; and
- ▶ Experience of working collaboratively with surveyors, delay and technical experts to quantify losses.

Transaction disputes

We have significant experience advising and providing expert services on liability issues and the assessment of quantum in the real estate and construction industry, including:

- ▶ Pre-transaction services such as SPA advisory, integrity due diligence, completion accounts review, and warranty & indemnity insurance advice;
- ▶ Post-transaction services dealing with completion accounts, earn-outs, and breach of warranty claims including in the context of litigation in court, arbitration (including investor-state), and expert determination; and
- ▶ Expertise in both explaining the accounting implications of SPAs and building or using complex business transaction models to quantify loss.

FINANCIAL CRIME AND FRAUD INVESTIGATIONS

Our team members have extensive experience of tackling financial crime and fraud, with experience conducting large-scale and complex investigations, bringing together fraud and financial crime experts with a range of backgrounds in civil and criminal investigations, forensic accounting and forensic technology.

Should the need arise, our team are skilled at conducting sensitive financial and accounting investigations, providing services including:

- ▶ Fraud and financial investigations - We use a combination of forensic accounting and data analytics to establish the factual matrix, trace flows of funds, and quantify losses;
- ▶ Asset-tracing and recovery - We use both publicly available sources of information, and remote and boots-on-the-ground corporate intelligence research to identify and locate misappropriated assets;
- ▶ Forensic due diligence/forensic audit - Whether you are considering a real estate or construction joint venture, strategic partnership, new subcontractor or important transaction, we are able to perform forensic accounting reviews and provide intelligence on the counterparty;
- ▶ Corruption and bribery investigations - Real estate and construction projects, particularly in certain jurisdictions, are highly vulnerable to corruption and bribery. We are able to carry out internal investigations and investigations of counterparties and agents;
- ▶ Investigations linked to contentious insolvency matters - We are experienced in acting for administrators and liquidators, assisting with asset recovery, corporate valuations, and pursuing claims; and
- ▶ Risk and crisis management - We can assist the board in determining the vital initial steps when a crisis hits or help you proactively plan to prevent and mitigate crises.



SPECIALIST FORENSIC SERVICES

There are situations that call for specialised skills, knowledge and services. You can rely on us to provide any or all of the following services:

Corporate intelligence

- ▶ Integrity due diligence and sector-focused Country Risk Analysis of potential overseas construction partners;
- ▶ Due diligence investigations and lifestyle assessments of new hires/existing executives;
- ▶ Investigations into construction procurement fraud and collusion;
- ▶ Investigations into proposed contractors, joint venture partners or strategic partnerships, middle-men, introducers and fixers;
- ▶ Competitor intelligence; and
- ▶ Technology-supported asset tracing and extensive global capability for on-the-ground enquiries.

Professional negligence

- ▶ Specialist services for auditing and accounting negligence cases in both the UK and overseas jurisdictions;
- ▶ We are also able to assist by advising on claims against solicitors, tax advisors and other professionals in the construction and real estate industries;
- ▶ In addition to being experienced with dispute resolution avenues (e.g. High Court, mediation, and arbitration), our practitioners have recent audit, accounting and regulatory backgrounds; and
- ▶ We have experience in assessing quantum of loss resulting from professional negligence, including in the context of an SPA, an insolvency, or a fraud.

Valuations

- ▶ Share valuation of real estate and construction companies or funds, including for commercial, tax or accounting purposes (including purchase price allocations);
- ▶ The team includes chartered surveyors and other industry specialists;
- ▶ Intangible asset and cash generating unit ("CGU") valuations;
- ▶ Valuations of financial products including derivatives and structured products;
- ▶ WACC assessments for impairment testing and project appraisal;
- ▶ Contentious valuations and Expert Witness or Expert Determination services; and
- ▶ Valuation of PPP/PFI-backed projects, construction joint ventures and real-estate funds.

Forensic technology services

- ▶ eDisclosure - the processing and hosting of data for electronic disclosure;
- ▶ Case management - guiding clients through all phases of the electronic disclosure process, from information governance through to presentation in court;
- ▶ Forensic data recovery and imaging - obtaining data from a wide range of electronic devices in a defensible manner suitable for introduction to court;
- ▶ Forensic data analytics - the extraction, transformation and analysis of high-volumes of data with complex relationships; and
- ▶ Consulting on cutting edge technology which can improve efficiency and reduce risk.

OUR EXPERIENCE

How we have recently helped real estate and construction clients

RECENT EXPERIENCE WITH REAL ESTATE AND CONSTRUCTION CLIENTS INCLUDES

COMPLETION ACCOUNTS DISPUTE

We acted on behalf of the seller in relation to a completion accounts dispute following the sale of our clients' construction business. The dispute was in relation to:

- ▶ The final adjustment amount to the purchase price, in particular the appropriate accounting for long term construction contracts per the terms of the sale and purchase agreement; and
- ▶ Allegations by the buyer of a breach of warranties under the sale and purchase agreement.

The case was submitted to the Swiss Arbitration Tribunal in early 2019.

Our analysis identified fundamental issues with the Claimant's claim, and contributed to a satisfactory out-of-court settlement, reached at the end of 2020.

QUANTIFICATION OF DAMAGES

We acted for the state respondent in a number of ICC arbitrations in connection with a damages claim brought against it following delays in a large construction project in Central America. Our work involved:

- ▶ Reviewing the quantum reports submitted by the Claimant's accounting expert and other documentation.
- ▶ Preparing expert reports responding to those submitted by the Claimant and providing our own assessment of the alleged losses suffered by the Claimant.

Our expert reports particularly focussed on: consideration of Return on Investment ("ROI") as a measure of compensation for delay; Opportunity cost; the financial position of each of the Claimants; the use of Weighted Average Cost of Capital ("WACC"); and issues of causation and foreseeability. The expert also gave evidence and was cross-examined in oral hearings.

CORPORATE INTELLIGENCE

Our client, a UK bank, had identified a certain number of long-standing high net worth clients on whom only very basic due diligence had been undertaken, and whom the bank believed might potentially present money laundering risks.

One of the first individuals on whom we were asked to undertake detailed Integrity Due Diligence ("IDD") checks was an overseas national primarily resident in Nigeria and prominent, inter alia, in the construction sector there.

Our investigation identified detailed intelligence on the alleged business methods and key local associates of the subject, as well as of actions he had allegedly taken to ingratiate himself with successive regimes in Nigeria and thereby secure lucrative contracts from government bodies and others. Our findings led to a great deal of concern on the part of the bank, though we were not subsequently informed of any subsequent action taken.

INVESTIGATIONS

We acted on behalf of a South Asian property development group where a former employee alleged that the management of the group had misappropriated funds and failed to safeguard the investors' assets. In particular the whistle-blower alleged that the group had engaged in two separate fraudulent schemes.

Our work involved:

- ▶ Reviewing the allegations made by the whistle-blower prior to the claims being issued, in particular whether allegations could be supported by information in the financial statements.
- ▶ Reviewing the group structure, ownership and operations of a sub-group of companies to identify any unusual operations or transactions.
- ▶ Working with the local BDO office who provided evidence on local market practices.

Through our detailed analysis, we identified a number of unexpected or unusual transactions, and transactions which contradicted the evidence of the Respondents' witnesses. We submitted two expert reports, each of c. 1,000 pages including appendices, in each of LCIA and AAA actions.

OUR PEOPLE

Key contacts

REAL ESTATE AND CONSTRUCTION SECTOR SERVICES



NICK ANDREWS

+44(0)77 8843 5618
nick.andrews@bdo.co.uk



GERVASE MACGREGOR

+44(0)77 7075 6770
gervase.macgregor@bdo.co.uk



CARYN DEELEY

+44(0)78 0068 2128
caryn.deeley@bdo.co.uk



KALEY CROSSTHWAITE

+44(0)78 0068 2151
kaley.crossthwaite@bdo.co.uk



MICHAEL SMITH

+44(0)79 2905 6468
michael.j.smith@bdo.co.uk



NAT BUTCHER

+44(0)75 8305 8953
nat.butcher@bdo.co.uk



FOR MORE INFORMATION:

NICK ANDREWS

+44 (0)77 8843 5618
nick.andrews@bdo.co.uk

MICHAEL SMITH

+44(0)79 2905 6468
michael.j.smith@bdo.co.uk

This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad statements only. This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication without obtaining specific professional advice. Please contact BDO LLP to discuss these matters in the context of your particular circumstances. BDO LLP, its partners, employees and agents do not accept or assume any responsibility or duty of care in respect of any use of or reliance on this publication, and will deny any liability for any loss arising from any action taken or not taken or decision made by anyone in reliance on this publication or any part of it. Any use of this publication or reliance on it for any purpose or in any context is therefore at your own risk, without any right of recourse against BDO LLP or any of its partners, employees or agents.

BDO LLP, a UK limited liability partnership registered in England and Wales under number OC305127, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. A list of members' names is open to inspection at our registered office, 55 Baker Street, London W1U 7EU. BDO LLP is authorised and regulated by the Financial Conduct Authority to conduct investment business.

BDO is the brand name of the BDO network and for each of the BDO member firms.

BDO Northern Ireland, a partnership formed in and under the laws of Northern Ireland, is licensed to operate within the international BDO network of independent member firms.

Copyright © February 2023 BDO LLP. All rights reserved. Published in the UK.

www.bdo.co.uk