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## **Market Talk: The growing role of forensic accountants**

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**Specialised forensic accounting and commercial damages experts bring a multitude of capabilities to disputes**

**In the current dispute-rich environment, what added value to forensic accounting and commercial damages (FACD) experts bring to legal cases?**

FACD experts are knowledgeable in all phases of the dispute resolution life-cycle, from providing strategic consultation early in the process, to analysing issues and producing expert reports, assisting with settlement negotiations and providing oral testimony.

Experts can provide analysis on how to mitigate impacts of a dispute; the realistic impacts of a business interruption, taking into account the finances and marketplace of the company; and the true impacts on valuation.

FACD experts have the capability and ability to develop “outside the box” solutions to complex disputes. They can develop high-quality financial and economic analysis in order to deliver credible opinions and persuasive testimony in high-profile disputes and investigations.

These opinions vary depending on the nature of the dispute. In disputes related to breach of contracts, business interruption, malpractices, post-acquisition disputes or class actions, FACD experts can assess economic damages related to lost profit, economic benefits, consequential damages, wasted costs or lost investment opportunities.

Similarly, in cases related to shareholder disputes, tax disputes, contract terminations, post M&A disputes or real estate disputes, FACD experts can provide valuation of businesses, shares and assets.

In addition, FACD experts play a key role in intellectual property disputes, trademark infringements, IT disputes or breach of trade secrets, patents or licensing agreements, and providing reasonable valuation of royalties, intangible assets and economic damages.

Following the identification of the Base Works, the next consideration is the baseline programme.

**How widespread is awareness of FACD as a discipline in the region?**

The use of forensic accountants in both investigations and calculations of damages is increasing. With the development of Middle East governments’ strong enforcement of accountability and transparency, we see a significant rise in the need for forensic services related to fraud investigations, accounting irregularities, bid rigging, bankruptcy, bribery and corruption, funds tracing, money laundering, ponzi scheme investigations, regulatory compliances, fraud risk management and shareholder disputes.

As more clients recognise that the benefit of using forensic accountants to analyse damages far outweighs the cost in complex disputes, our experts are asked to advise clients and stakeholders on complex contentious matters and are instructed on disputes requiring the quantification of lost profits arising from breach of contracts and warranties, valuations resulting from expropriation and shareholder disputes, and quantification of damages in respect of class actions, professional negligence, insurance claims and post-acquisition disputes.

The challenge is that for many potential clients, if they haven't used forensic accounting and commercial damages experts before, they see the cost of using such experts but not the benefit. It is only once people realise that a different viewpoint can dramatically impact damages claims that they start to use such experts, in addition to any others they may be using.

Regarding investigations, the main challenges are also cost, but also an assumption that matters can be addressed in-house, which may not always be the case.

### **In what areas have your clients been most appreciative of a FACD approach?**

The greatest appreciation of applying a FACD approach to disputes is often when it highlights an area that was not obvious – for example flagging that a business was not viable or the profitability was far less than being claimed. When considering a loss of value, the team appreciates being helped to identify that the total loss in valuation needs to consider the whole future expectations for the project, both originally and as changed.

For investigations, the appreciation often comes when we pull together disparate pieces of evidence to find the links and explain a connection that previously was not visible but can help to explain how a fraud was committed.

The opportunities for clients fall into two main areas:

- For investigations, firstly pursuing questions that have not previously been scrutinised around bid rigging, fraud and the like.
- Carrying out the financial analysis that helps to show the links between different elements to enable conclusions to be drawn to identify or rule out fraud.

In disputes, clients find it particularly helpful when FACD experts make the analysis of damages more robust by considering the broader context of the case and the impact on the claims, as well as applying complex damages and valuations.