How to Conduct Internal Investigations of Compliance Violations Involving Your Foreign Operation/Business?

Felipe Maldonado Garcia

Shin Jae Kim Renata Muzzi

AGENDA

Cross-Border Investigations: Complexity Beyond Domestic Issues

Do's and Don’ts When Conducting Cross-border Internal Investigation

Reporting the Results
Cross-Border Investigations

- Location of misconducts

Country: Canada, Chile, France, Greece, Argentina, KSA, Russia, India, Brazil, Indonesia, Mexico, China

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<th>Country</th>
<th>Enforcement Actions</th>
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Cross-Border Investigations

- Investigations Concerning Bribery of Foreign Officials by Country

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Source: TRACE Global Enforcement Report 2018
Cross-Border Investigations

- Case Study - Odebrecht
- Countries targeted by the alleged bribery
- Countries that cooperated in the investigation

Cross-border investigations add a layer of complexity beyond the issues seen in domestic work. Complexity arises from a variety of issues that usually need to be handled simultaneously:

- Attorney-Client Privilege
- Cultural Issues
- Local Authorities
- Data Privacy
- Local Legislation

Among others...
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Cross-Border Investigations: Complexity Beyond Domestic Issues

Do’s and Don’ts When Conducting Cross-border Internal Investigation

Reporting the Results

Things to Consider

- Build the roadmap to your investigation
  - Seek for local advisory, as needed
  - Establish independent reporting lines
  - Assemble the necessary investigation team
  - Protect attorney-client privilege

- Understand your data protection obligations
  - Assess applicable jurisdictions
  - Establish procedures to navigate the rules
  - Build the investigation strategy under the applicable rules
Things to Consider

Focus on Communication
- Local business may use other tools to communicate (e.g. WhatsApp, Skype, internal chats)
- Collect all relevant communication tools
- Follow local rules for collecting the data

Mind cultural aspects
- Focus on obtaining the information
- Don’t let local language be an impairment
- Fit the culture into the strategy
- Seek for local advice, as needed

Look through different angles while deciding to retain external advisory
- Impact on attorney-client privilege
- Complexity and sensitivity of the matter
- Protect the information’s confidentiality

Consider local legislation
- Avoid labor liabilities
- Navigate local data protection laws
- Consider other legal implications
- Cultural aspects may also kick-in
Do’s and Don’ts

Hypothetical

You are the CCO based in the U.S. of a multinational company with business throughout LatAm. Your hotline receives an anonymous report holding that your Argentine Operational Manager has hired a consultant with a reputation of having close ties to the local public official responsible for issuing the main business license of the Argentine subsidiary.

You are about to start an internal investigation

Hypothetical

- Reporting line

Global Headquarters

LatAm Headquarters

LatAm Units
Do’s and Don’ts

Hypothetical

Moving forward, your LatAm in-house counsel (based in Brazil) volunteers to coordinate the investigation. He says that according to his experience, it is better to keep sensitive matters like the one in hand indoors.

- Should you deal with the matter internally?
- Any privilege concern?

As you insist on having external assistance, the in-house counsel suggests hiring a forensic accounting firm as they have been helping in a few other smaller investigations within the Argentine unit.

- Should the company hire the forensic firm?

Do’s and Don’ts

Hypothetical

You learn that all emails from Argentina are host in a local server in Buenos Aires and that any approval of hiring consulting firms (like the one object of the report) must be approved by the management in Brazil.

- Any concerns and would you also collect the data in Brazil?

For the interview, you want to send your best interviewer from the U.S. who does not speak the local language. Also, the in-house counsel suggested starting easy, as people in Argentina tend to freeze when put on the spot.

- Any concerns and should you follow the advice?
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Reporting the Results

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Reporting the Results

- Things to consider:
  - Who will receive the results?
  - How to report the result?
Key Takeaways

- Plan before you act
- Protect the privilege
- Collect relevant communication tools
- Respect the data privacy
- Mind cultural differences
- Seek for local laws and regulations

THANK YOU!

Felipe Maldonado Garcia  
felipe.maldonado@stericycle.com

Shin Jae Kim  
skim@tozzinifreire.com.br

Renata Muzzi  
rmuzzi@tozzinifreire.com.br