

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



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1

## AGENDA



Cross-Border  
Investigations:  
Complexity Beyond  
Domestic Issues



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



Reporting the Results

2

1

# Cross-Border Investigations



## Location of misconducts

Location of Misconduct Alleged in FCPA-Related Enforcement Actions (by Country)



Country	Canada	Chile	France	Greece	Argentina	KSA	Russia	India	Brazil	India	Indonesia	Mexico	China
Enforcement Actions	1	2	2	8	14	14	15	21	21	21	21	22	57

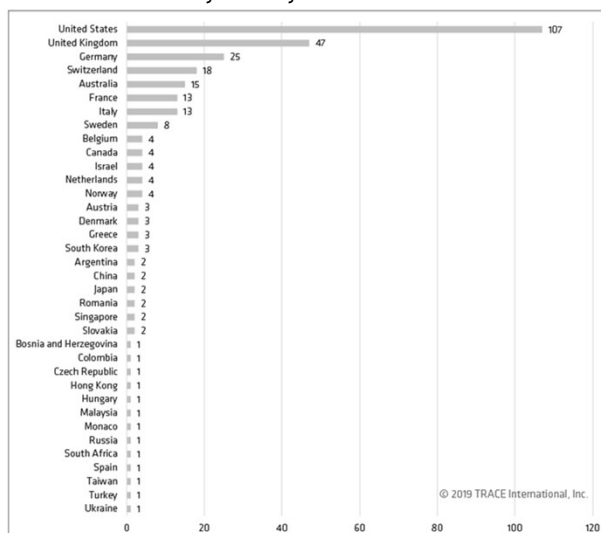
Source: <http://fcpa.stanford.edu/statistics-analytics.html?tab=8>

3

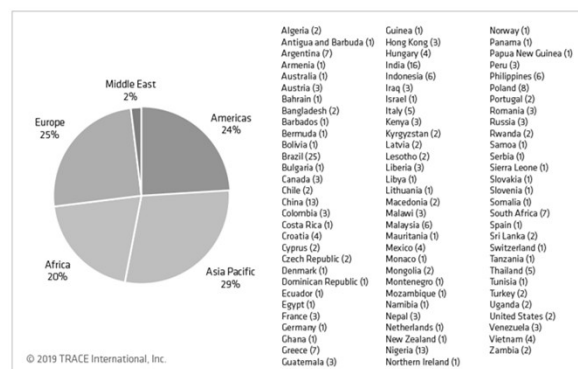
# Cross-Border Investigations



## Investigations Concerning Bribery of Foreign Officials by Country



## Investigations Concerning Bribery of Domestic Officials by Country



Source: TRACE Global Enforcement Report 2018

4

2

# Cross-Border Investigations



## ❑ Case Study - Odebrecht

### ❖ Countries targeted by the alleged bribery



### ❖ Countries that cooperated in the investigation



Source: Transparency International Exporting Corruption - Progress Report 2018

5

# Cross-Border Investigations



- ❑ 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...

3

6

# AGENDA



**Cross-Border Investigations:  
Complexity Beyond Domestic Issues**



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



**Reporting the Results**

7

# 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



8

# 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



9

# Things to Consider



## ❑ 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



10

# 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

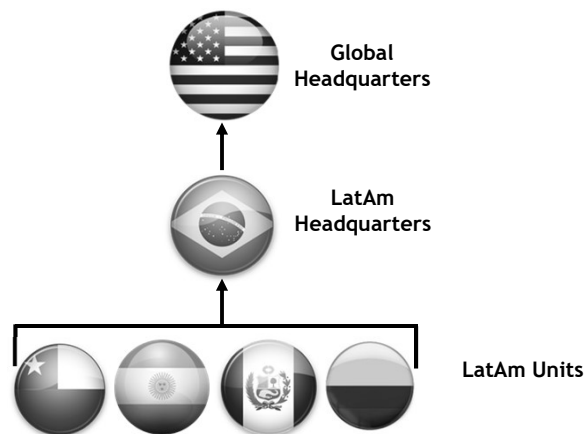
11

# Do's and Don'ts



## Hypothetical

☐ Reporting line



12

# 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?

13

# 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.

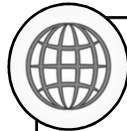
- ☐ Any concerns and would you also collect the data in Brazil?

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?

14

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Reporting the Results

15

## Reporting the Results



□ Things to consider:



Who will receive the results?



How to report the result?



16



# 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



17



## THANK YOU!

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18