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Conducting internal investigations across borders

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As compliance and ethics professionals, you probably know that an internal investigation is challenging by nature. You must thoroughly understand the issue, quickly analyze the facts and risks, make sure the illicit conduct has stopped, interview the employees, possibly interact with authorities, and develop remediation efforts for the short and long term.

Now imagine you are the compliance professional of a US company with businesses in Latin America, and you receive an anonymous tip that employees are paying bribes in Bolivia, Brazil, and Paraguay. What was already challenging becomes a much more complex procedure as you will now face a cross-border investigation.

The complexity of different perspectives

In such complex cases, planning is key. First, in any cross-border investigation, it is crucial to build the road map of the investigation, understand the risks, and consider the jurisdictions possibly involved. Once a possible irregularity or misconduct is identified, the company should take all the appropriate measures to investigate and identify the details and source of the problem, including the individuals involved and potential flaws in the compliance program. This will also ensure the company has the information and answers it needs should an external investigation be initiated.

The additional layer of complexity within a cross-border investigation arises from a broad range of issues that usually need to be addressed at the start of the investigation and coordinated simultaneously, such as local legislation, cultural considerations, possible language barriers, different data privacy regulations, and ensuring attorney-client privilege in different jurisdictions, as necessary. Because of that, it is common to have cross-border investigations conducted by a local adviser that will be responsible for consistently coordinating all fronts of the investigation, defining strategies, and keeping an independent report line directly with the headquarters. The compliance professional must not let local language be an impediment and should consider the cultural aspects when developing the investigation strategy, and always seek local advisers as required.

Additionally, it is extremely important to remember that different countries have different levels of perception regarding corruption or any other illicit conducts, and that makes cross-border investigations even more challenging. It is almost common sense nowadays that some countries will represent a much higher corruption risk when compared to others. Thus, a global vision of all the countries involved is one of the key points for a successful cross-border investigation.

Another important step to take in the early phase of the investigation is the determination of who from management (local or even international) should be notified of the compliance investigation. This point is crucial



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because the people who are made aware should also be reminded about the importance of keeping the confidentiality during the investigation and how the breaching of this confidentiality might have impacts on the integrity of the whole procedure. In some countries management may see contacting the subject of an investigation as a courtesy or a polite gesture. It may seem like a basic principle of an investigation, but this is a good example on why understanding local culture is highly relevant in a cross-border investigation.

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