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Dos and don'ts when conducting cross-border internal investigations in LATAM

By Melina Llodrá and Mariana Idrogo

Conducting cross-border internal investigations is not an easy task, as they are exposed to several challenges, such as lack of time and supporting documents, cultural differences, unclear procedures, and/or gaps in local legal framework. When conducting investigations in Latin America (LATAM), it is key to identify these challenges to define an appropriate investigation plan and relevant procedures.

Defining the scope

When assessing the rationale behind the alleged infraction, it is essential to identify any need to mitigate damages and decide any urgent measures to put in place, e.g., provisional actions to be taken while the investigation is conducted to stop any unlawful activity. And as a first step, we need to understand what happened and how much information we have about it; therefore, it is helpful to pose the following questions: When did the alleged incident occur? What happened? Who was involved? Who was present? Who may have knowledge of it? According to corporate policy, which key sources can we access quickly? What is the impact of local rules and culture on answering the above questions?

Developing the policy and procedures

There is no specific way to conduct an investigation. The policies and procedures should consider the risks involved, the resources needed (including a local advisor), the company's internal organization and culture, and the impact of the local jurisdiction framework and culture on the above things. The investigation program will guide the investigation process by defining:

- What should be investigated (such as crimes and improper conduct);
- What cannot be investigated according to the local legal framework (for example, subjects concerning privacy issues);
- Who conducts the investigation; and
- To whom to report its results.

When defining the above vital elements, local cultural issues in LATAM may be critical. Behavior and cultural standards may differ (e.g., hospitality gifts, conflicts of interest in family-run businesses, etc.), and language

gaps are likely to occur (it is important to understand the local language and slang). It is essential to involve local counsel up front, not only to understand the impact of the local legal framework but also to bypass any cultural gap. Local counsel will help consider those investigative techniques that are more readily acceptable in the local jurisdiction and will impact the investigation's pace.

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