

CEP Magazine – December 2019

Conducting cross-border internal investigations

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Monitoring and enforcement are crucial parts of implementing and maintaining a successful compliance program. Organizations should be able to conduct and provide evidence that they perform effective internal investigations, which are usually triggered by an internal complaint, a report, an authority inquiry, or at the request of a competent authority.

Internal investigations present a number of challenges, which become much more complex in the event of cross-border investigations. Different enforcement agencies operate within their own legal and technical frameworks. Any investigation is a dynamic process, and the scope of each investigation can change significantly as it progresses. Therefore, organizations that operate in more than one country face an array of sometimes-conflicting foreign and domestic legal and regulatory requirements. The purpose of this article is to discuss specific issues relevant to conducting a cross-border investigation.

The investigation team

Prior to initiating an investigation, one should begin by asking, “What are we going to investigate and where?” The aim of this question is to map all relevant territories/jurisdictions and all applicable laws in these territories, including all agencies that might be involved.

To achieve this, the investigation team should include lawyers from all relevant territories who are familiar with the different applicable local laws, regulations, and binding industry codes, such as criminal, competition, employment, environment, etc. Take into account the results of the above-mentioned mapping when nominating the leader of the investigation team so that the leader will be the best professional to deal with the main legal concern/regulatory agency. The leader may have to decide, based on a risk-based approach, which demands and rules should be met and which might not.

The subject of the investigation and the roles of the employees to be investigated can affect the decision of using internal or external investigators, with a preference to external investigators in the case of high-ranking employees. Furthermore, the geographical scope of the investigation is relevant for such a decision as well—whether this is a local matter that should be managed by a local lawyer, or whether the investigation might affect the organization in other jurisdictions.

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