



## Five insights on cross-border investigations

An interview with Anthony Campanelli, partner, Deloitte Financial Advisory Services LLP; Kevin Corbett, partner, Deloitte Financial Advisory Services LLP; and Ryan Colabello, senior manager, Deloitte Financial Advisory Services LLP

Increased globalization and scrutiny from regulators outside the United States continue to focus concern about fraud and corruption. Approximately 97 percent of respondents queried during a recent Association of Certified Fraud Examiners Global Fraud Conference anticipate an increase in cross-border investigations in the coming years, indicating that fraud and corruption are issues that are likely here to stay. The implications of this for global corporations are important, as Kyle Sheahan, partner at the international law firm of King & Spalding LLP, explains: “Multinational organizations must form a global view of any potential misconduct, because enforcement authorities are working across borders to do exactly that.”

Cross-border investigations (as compared with their domestic counterparts) can pose several unique challenges, including language barriers, cultural differences, and resource limitations.

The unpredictable nature of these investigations makes it almost impossible to apply a “one-size-fits-all” approach, and—as a result—many organizations struggle to carry out such investigations in a thorough, yet effective, manner. When asked about the biggest challenges their organizations face in conducting effective cross-border investigations, respondents at the aforementioned ACFE conference indicated (in descending order) limited internal investigatory resources; differences in local language, business customs, or culture; and availability and accessibility of electronic data (for example, data privacy restrictions). Here are five insights that can shed some light on this topic.



**Lack of well-defined scope.** Cross-border investigations will require additional time to make as full initial scope of the situation as possible, as well as the initial key risks. Structure the investigation with well-defined priorities, assignments, and deadlines.

**Lack of team members with adequate skills.** An investigation team should have skills that are specifically tailored for the situation at hand, and each cross-border team typically requires certain specialized skill sets. Assign clear roles and specific responsibilities, then support the team with effective and efficient communication channels.



**Common challenges for in a cross-border investigation**

**Lack of regular, ongoing reporting.** Investigators need ways to keep stakeholders updated on progress. Establish regular, ongoing stakeholder updates—whether by email, phone, or in person. Back these up with timely reporting of issues and unexpected constraints.

**Lack of consideration of local requirements.** No two countries are the same. Be mindful of local laws, particularly as they pertain to data privacy and state secrets. Local customs are important as well: A business practice that is prohibited in the United States may be widely acceptable in another country.

**Insight #1. Design intake mechanisms that are tailored, readily available, and well-communicated.**

No matter the location, a common trigger of investigations is a whistleblower tip received through a hotline where employees can anonymously report possible wrongdoing.

While most companies have some sort of whistleblower reporting program in place, such programs may not be equally effective in all countries. For instance, the term “whistleblower” may have negative connotations in certain places, or employees may be uncomfortable submitting their tips over the phone. As a result, organizations should give some thought about the way they frame the tip program in a particular location. It’s also worth adding other anonymous reporting channels; for example, email, web form, and use of a post office box are alternatives to the traditional telephone hotline.

Even with all this, keep in mind that the reporting program can falter if its only language is English. From the website to the phone-answering service, reporting mechanisms should be localized so that employees can navigate them with ease and feel comfortable using them.

Finally, a whistleblower program is only effective if employees are aware of it. Communicate the existence of the program (and its importance to the company’s culture of compliance) so employees know where to turn if they suspect wrongdoing.

**Insight #2. Plan and lay the groundwork.**

When reports of misconduct do arise, the first instinct may be to spring into action quickly. However, hasty and inadequate preparation can easily get in the way of progress. This is especially true with cross-border investigations, where nuanced differences often exist from one country to another.

Instead, set aside time to carefully think through the approach in the form of a detailed investigative plan, which should include the initial tasks to carry out in response to allegations of fraud (for example, gather email records and expense reports of the individuals named in the allegations).

Since it’s hard to predict what will happen in an investigation—and many people are likely to be involved—the plan also should include well-designed protocols. Knowing how to proceed under different circumstances is important to help minimize confusion, duplication of effort, and a host of other inefficiencies that often arise when handling issues from country to country.

Another consideration to be aware of is local language, business customs, and cultural differences. From a language perspective, companies may want to weigh the benefits of translating information into English for review against the possibility that certain local-language nuances may be lost in translation.

Additionally, companies will want to be cognizant of unwritten rules about how business is typically conducted in certain countries (for example, in India and China, providing gifts to government officials is not only common, but almost expected). Moreover, there may be heightened sensitivity around the interview process in international locations; attorneys, forensic accountants, translators, and others may need to be present—a potentially intimidating situation for anyone being questioned.

Then, of course, there's the data. Multinational organizations will likely have disparate IT systems in different countries and languages, which can make data collection, consolidation, and analysis one of the most time-consuming and expensive aspects of an investigation. Additionally, varying data retention policies around the world may affect the availability of certain electronic data, such as email and financial records. Lastly, companies will likely wish to seek legal counsel early in the process when considering various data privacy laws and other considerations in different countries. Mr. Sheehan provides one example: "Certain legal protections that US companies and individuals may take for granted—such as the application of attorney-client privilege—can be viewed very differently abroad. It is critical to bear such differences in mind when conducting international investigations."

### **Insight #3. Prepare to turn over a lot of stones and go in different directions.**

Even with meticulous planning, the unexpected can (and almost always does) happen. That does not mean the investigation will go off course; it does mean the investigation should have built-in flexibility and effective lines of communication so the team—and the investigative plan—can adapt to changing circumstances.

For example, as companies increase their reliance on data analytics throughout the investigation, they may be more likely to identify other patterns or anomalies of interest that may point to potentially improper activity beyond what was reported initially, potentially leading to new avenues for investigation (such as other geographies, business lines, or third parties).

Other surprises may arise during interviews. Sometimes they are as simple as learning about an internal control process, whereas others may point to additional wrongdoings. Either way, a skilled interviewer (with proper preparation) can bring out information that may not have been evident in the initial allegations or document review. In a cross-border investigation context, there may be increased importance on relying on interviewers familiar with the local language and business customs (which may be more effective than solely relying on translators).

### **Insight #4. Align on reporting protocols early.**

In a cross-border investigation, finding the truth is one of the underlying objectives. That said, once the fieldwork is done, companies often turn their focus to reporting. Depending on the nature of the investigation and the findings, there may be several stakeholders to whom the company may report results—internal compliance or legal departments, audit committee or board of directors, outside regulators, or investors—each of whom will likely ask for different types of reports. Companies may alter the level of detail and format (written vs. verbal) depending on stakeholder needs and other considerations. This can be additionally complex with a cross-border investigation, as different countries may also require different reports based on the nature of the matter.

The bottom line is that each stakeholder may be looking for something different from the investigation, and companies should consult early (both internally and with external legal counsel) to agree the various reporting protocols and requirements so they are prepared in advance.

### **Insight #5. Take a proactive approach to remediation.**

Once the results from an investigation are received, the next step is remediation. Remediation is more than simply terminating the bad actors from the organization; it also involves addressing the breakdown in internal controls that allowed the misconduct to occur. Investigation teams will want to put a remediation action plan in place following an investigation, which can help demonstrate (to both internal and external stakeholders) the company's priority of enhancing compliance and preventing similar incidents in the future. While it is certainly important for companies to respond promptly in these situations, "getting it right" is perhaps more important. Investigation teams will want to draft a remediation plan that is well-thought-out and includes detailed specific action steps, names of accountable or responsible owners, and key milestone dates to track progress and implementation.

Another important consideration is that the same faulty internal controls that led to the initial misconduct may exist in other areas of the company (for example, other countries or business units). Therefore, organizations may want to conduct some level of testing to assess whether a problem may exist elsewhere.

Lastly, companies cannot forget to follow up. Providing local in-country management with instructions for remediation is the first step, but if management doesn't act on those instructions, the same types of issues may reappear. Organizations should leverage analytics and other monitoring tools (along with knowledge gained during the investigation) to identify indicators of potentially similar activity.

## **Our take: Strategy is key to keeping cross-border investigations on track.**

There is no “one-size-fits-all” approach to investigations. The approach required to make an investigation successful can vary depending on any number of factors, including the nature of the underlying allegations, the location of the alleged misconduct, and the type of organization itself. Further, once investigations cross international borders, these nuances can multiply quickly. It is critical that companies invest sufficient time and resources to fully understand, prepare for, and respond to these complexities in order to navigate their way to a successful outcome.

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