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Managing an Investigations Docket in Asia-Pacific:
Key Regional Regulatory Issues and Top Tips for Conducting Cross-Border Investigations

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Today’s Agenda

1. Exploration of recent hot regulatory issues affecting the Asia region
   • Corruption
   • Technology and intellectual property
   • National security

2. Effectively manage and build cross-border investigations teams in Asia
   • Prioritize matters
   • Work plan
   • Interviews
   • Reporting
   • Key issues

Presenters

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1. Exploration of recent hot regulatory issues affecting the Asia region

2018 Corruption Perceptions Index

Notable Countries

North Korea 14
Afghanistan 16
Cambodia 20
Myanmar 29
Philippines 36
Thailand 36
Indonesia 38
China 39
India 41
Malaysia 47
Recent regulatory issues affecting Asia

US Foreign Corrupt Practices Act (FCPA) Enforcement

- 2019: Hong Kong’s former home secretary was sentenced to three years in prison for bribing African officials on behalf of a Chinese energy company. He was also ordered to pay a $400,000 criminal fine.
- 2018: Business services consulting firm paid more than $9 million to resolve FCPA charges arising from improper payments made by two Chinese subsidiaries. The subsidiaries “used third-party agents to make unlawful payments to obtain data vital to the business as a provider of business financial information,”
- 2018: A major food and beverages company paid the SEC $8.2 million to resolve Foreign Corrupt Practices Act charges for improper payments by its Indian subsidiary.
- 2018: A major technology corporation paid the SEC $13.9 million to resolve charges that it violated the FCPA by making illicit payments in its elevator business in Azerbaijan and aircraft engine businesses in China and elsewhere. Major technology corporation provided trips and gifts to various foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia through its subsidiaries. Company settled without admitting or denying the SEC’s findings. It disgorged $9 million plus pre-judgment interest of about $919,000, and paid a penalty of $4 million.
- 2018: A California based communications company agreed to pay $16+ million to settle charges that it violated the FCPA with regards to its Chinese subsidiary facilitating improper payments to government officials.
- 2018: A multinational investment bank agreed to pay more than $30 million to the SEC and a $47 million criminal penalty to resolve charges that the firm obtained investment banking business in the Asia-Pacific region by corruptly influencing foreign officials in violation of the FCPA.

Protecting Technology, IP and National Security

China Initiative and Economic Espionage Act

Announced by US Department of Justice former AG Jeff Sessions on November 1, 2018

Designed to strengthen enforcement of US laws against “foreign economic aggression”

1. Trade Secrets Prosecution: Civil and criminal trade secrets cases where technology or IP is transferred to Chinese individuals or companies
2. Government Official / SOE Interactions: Focus on identifying Foreign Corrupt Practices Act cases involving companies making bribe payments to government officials to obtain or retain business
3. Chinese Investments/Acquisitions: DOJ to implement the Foreign Investment Risk Review Modernization Act (FIRMA), including developing regulations under statute
4. Apply Foreign Agents Registration Act: Against those seeking to advance China’s political agenda, including businesses such as consultants, PR firms, and lobbyists
5. Identify Supply Chain Threats: Particularly for telecommunications and 5G transition
2. Effectively manage and build cross-border investigations teams in Asia

Importance of an Investigator’s Role

- Helping employees through a difficult situation
- Preventing problems from arising
- Promoting a safe workplace
- Obtaining key facts from individuals
Investigation Elements – Process

- A collegial fact-finding that arrives at a rational conclusion
- Thorough interviewing of the reporter, the subject and fact witnesses with relevant information
- Gathering and analysis of relevant evidence
- Comparing the evidence to the applicable standard
- Assessing the credibility of each investigation participant and the strength of his/her evidence
- Reaching a legally defensible determination of whether the improper conduct actually occurred

**REMEMBER:** You do not investigate every report; you *resolve* every report.

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Investigation Lifecycle

1. Review and analyze
   - Allegations
   - Scope
   - Policies
   - Laws

2. Investigate
   - Fact finding
   - Research
   - Document review
   - Interviews

3. Conclusion
   - Documentation
   - Reporting
   - Corrective actions
   - Follow-up
Prioritize and Identify Matters

1. Severity of legal issue (civil and/or criminal)
2. Dollar amount / value
3. Number of employees potentially involved
4. Seniority of employees potentially involved
5. Credibility of the whistleblower
6. Quality and specificity of the information provided
7. Potential outcomes of an investigation
8. Whether regulatory authorities are or should be involved
9. Legal obligations to investigate and/or disclose
10. Company policies and procedures including any that reflect the above

Build the Right Team

1. Aligned with global team
2. Experienced cross-border investigation attorneys
3. Knowledge / experience with relevant substantive issues
4. Experience with local legal issues
5. On-the-ground presence
6. Working experience with relevant government authorities
7. Fluent in local language, understand local culture
Preliminary Steps – Work Plan

- Importance of a work plan
- Flexibility
- Revise, revise, revise

Work plans can take on many forms, but they should all contain the same important details.

Consider the facts at issue:
- Background
- Allegations

Consider the sources of information:

Research
Reviewing Documents Prior to the Interview

☑ Review Policies and Procedures
  • Have you read the applicable policies and procedures before the interview?
  • Have you determined what the potential issues might be?
  • Have you identified the purpose and objectives of the investigation?
  • Have you considered whether you will need legal or compliance assistance?

☑ Review Work Plan

Purpose of Interviews

▪ Fact gathering
  ▪ Determine what happened in the matter under investigation

▪ Understand what is in the documents
  ▪ Who wrote what, why, for whom, and what did it mean?

▪ Learn what is not in the documents
  ▪ Discuss the issues generally with the individual, get their understanding of what happened
  ▪ Identify other areas to explore, additional people to interview

▪ Identify documents we may not have yet

▪ Assess credibility and skill of key individuals
General Interview Advice

- Build a rapport
- Be a good listener
  - 80-20 rule
  - Active listening
- Ask straightforward questions
- Start with non-confrontational questions
- Find out the basis of the person’s knowledge
- Avoid compound questions
- Note any mitigating circumstances

When You Begin the Interview

- Confidentiality
- No retaliation
- Upjohn Warning
- Importance of cooperation
- Set expectations

Final Report and Documentation

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Other Key Considerations

Roles and Responsibilities
- Investigators – in-house v. outside counsel/accounting firms
- Legal oversight / privilege

Fact-Finding
- Data collection / analysis
- Location / privacy law implications
- Data retention/litigation holds
- Employee interviews
- Local law requirements
- Language
- Cultural differences
- Time zones

Report Findings / Remediation
- Audience
- Local law requirements

Disclaimer

These are general guidelines and best practice tips

- Use your judgment
- Based on the type of investigation some of these will not be applicable
- Consult your legal department
Questions?

Jimmy Chatsuthiphan

Jimmy Chatsuthiphan, a licensed attorney, is the Director of Global Compliance Investigations for Panasonic Avionics. Jimmy has recently returned to America after a six-year stint living and working in Southeast Asia, during which he counseled multinational companies across a wide range of compliance, investigations and dispute resolution matters. Previously based in Asia-Pacific as the Senior Director of Ethics and Compliance for Diebold Nixdorf, Jimmy shares his unique insight into a region of the world where there is often no reward without risk. He is also the former Global Head of Compliance for Diebold Nixdorf's Hardware Business.

Jimmy draws from over a decade of experience at law firms, including several years with DLA Piper where he led the regional investigations and compliance practice from the firm’s Thailand office. He was recognized in the Legal 500 rankings in Asia-Pacific as possessing “expertise in regulatory compliance and investigations.” He is a Certified Compliance & Ethics Professional – International (CCEP-I), and was appointed to sit on Thailand’s ICC Corporate Responsibility & Anti-Corruption Commission.

Jimmy has received several prominent awards for his longstanding passion and commitment to high-impact pro bono projects and ethical business practices. At his previous firms, he was named a “Corporate Responsibility Champion” and “Pro Bono Shining Star”. He also served as a volunteer lawyer through the Veterans Consortium Pro Bono Program, representing U.S. military veterans and families before the U.S. Court of Appeals for Veterans Claims.
Jason Chang

Jason Chang is an international lawyer who advises clients on compliance and risk mitigation, government investigations and inquiries, white-collar crimes, and US-China transactions and operations. Having been based in China for over six years (2011-2017), Jason is fluent in Mandarin-Chinese and has conducted investigations abroad in China, Hong Kong, Taiwan, Japan, Vietnam, Thailand, Malaysia, Singapore, Philippines, Indonesia, India, Dubai, Australia, Canada, and Russia.

Jason advises clients on matters in relation to the Foreign Corrupt Practices Act (FCPA) and other anti-bribery laws, US Securities Exchange Commission (SEC) and Department of Justice (DOJ) investigations, litigation, US export controls and CFIUS, supply chain security, trade secrets, enhanced due diligence, serious employee misconduct, fraud, social engineering scams and cyber threats, China data transfer, as well as dawn raids and factory takeovers.

Jason also advises Asian, European, and North American multinational corporations on their global compliance programs. Jason helps companies mitigate legal and regulatory risks around the world by advising on proactive initiatives such as compliance reviews, risk assessments, program implementation (e.g. codes of conduct, controls, and policies and procedures), and training.

Education
Santa Clara University, School of Law, J.D.
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Professional Qualifications
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Languages
Chinese (Mandarin)
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