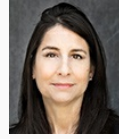


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Dos and don'ts when conducting cross-border internal investigations in LATAM

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.

Conducting the investigation

There are a few necessary steps when deciding on the need for an investigation. First, decide if there are reasonable grounds to proceed with the investigation. It is key to determine if there is enough credible information to investigate and which of the organization's policies or procedures might have been infringed. Then, evaluate to determine if there are competent investigative resources available. Finally, design an investigative roadmap, defining the investigation team, tasks to be performed, and an estimation of resources and time involved.

Communication is a major issue impacted by cultural differences. It is always key to use neutral, nonemotional wording (ideally first reviewed by a native speaker), but even more in LATAM countries, it is essential to create a collaborative approach and make sure to give focus to the alleged infraction as opposed to the reporters.

In several LATAM countries, the tension between the need for an investigation and respect for privacy and personal rights under local rules may create an obstacle to the investigation. Data collection restrictions and privacy rules in some jurisdictions may result in the need to implement specific procedures or even mean that some tasks cannot be performed.

Gathering evidence

Gathering evidence is one of the purposes of an investigation. In doing so, make sure to:

- Identify applicable documents required (including a code of ethics, the organization's policies and procedures, emails, and electronic records, etc.);
- Allocate sufficient time to gather relevant documents (remember that access to digitalized documents may still be a challenge in some LATAM countries);
- Have appropriate access to all relevant databases;
- Seek local legal advice;
- Collect documents following appropriate protocols and local rules;
- Protect the information collected;
- Preserve evidence.

Make sure to conduct the investigation in the local language—ideally involving a native speaker, as the same language may be used differently within LATAM countries. It will help you to get to know the local rules and culture and to use those investigative techniques that are more readily acceptable there (e.g., face-to-face or virtual interviews). When conducting interviews, it is important to involve a native speaker as part of the interviewer's team, to narrow any possible gap arising from the local culture. The same applies to selecting keywords for investigation and analyzing documents.

Conclusion

Keep several steps in mind when conducting a cross-border investigation involving LATAM. There is no “one-size-fits-all” approach. Planning the investigation and selecting the right investigative team, including using local native speakers as counsel and investigators, are key to conducting the investigation properly. Even though Spanish and Portuguese are the most common languages spoken in LATAM, countries in the region are not the same and present several cultural differences. Those may be crucial not only to retrieve but also interpret the information gathered throughout the investigation.

Takeaways

- Identify the challenges that an investigation in Latin America (LATAM) poses and define an appropriate investigation plan and procedures.
- Local cultural issues in LATAM may be critical because behavioral and cultural standards may differ.
- Consider the local jurisdiction’s framework and culture.
- Decide if any provisional measures must be implemented to stop unlawful activity and mitigate damages.
- Use the local language during the investigation, ideally including a native speaker.

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