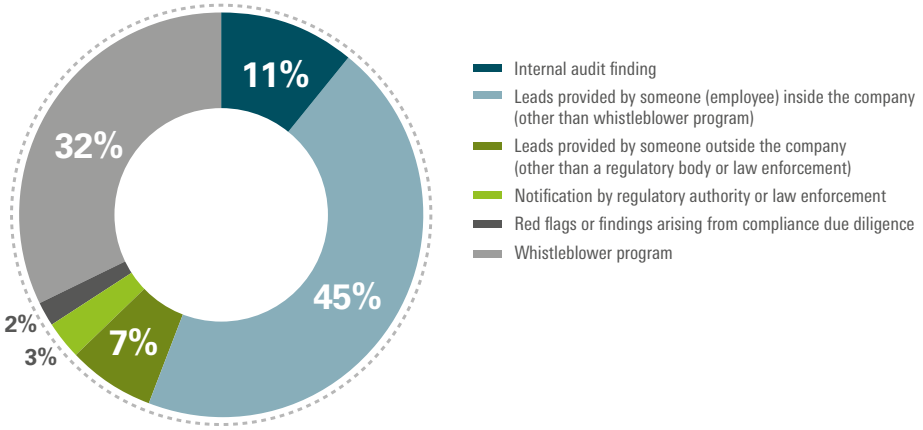
Cross-border investigations: Are you prepared for the challenge?

Many companies, both large and small, now operate internationally. The need to respond appropriately to incidents is a challenge for companies operating in one country, but where an incident spans national boundaries, languages, legal systems, and time zones those challenges can be magnified. Companies with well designed cross-border investigation protocols will be prepared to act quickly, efficiently, and effectively when responding to allegations.

A recent KPMG survey[1] asked 60 executives responsible for managing their organisations' cross-border investigations about the obstacles they face. This short article highlights some key findings from the survey.

Which of the following has been the primary trigger of most of your company's recent cross-border investigations?



Source: *Cross-border investigations: Are you prepared for the challenge?* KPMG International 2013

Triggers of cross-border investigations

Respondents indicated that internal tip-offs – either through formal whistleblowing mechanisms or informal channels – were the most common triggers for cross-border investigations. Creating feedback systems within a company that capture as much relevant information as possible about an allegation can assist in rapidly planning an appropriate response.

Challenges of cross-border investigations

Cultural differences

Cultural differences were indicated as a top challenge by 37% of respondents: up from 26% in a similar survey conducted in 2007. A company need not have worldwide operations for such issues to arise: even within the CEE region, something that may be acceptable to say or do in one country may offend someone from another.

For example, selecting an appropriate interview style is a common difficulty facing an investigator not familiar with local norms. Being too direct may result in a witness shutting down and becoming uncooperative; elsewhere, a failure to be direct could result in the investigation failing to uncover relevant information that the witness would have provided if asked.

1 Cross-border investigations: Are you prepared for the challenge? KPMG International 2013.

Local legislation

Another significant challenge indicated by survey participants was difficulty dealing with local laws. Many countries in the CEE region are members of the European Union, or aspire to membership, so there has been some convergence of laws on topics within the EU's scope. However, there are substantial differences between the laws of CEE countries in many areas relevant to investigations, especially in areas that are not addressed by the EU. Even on topics such as data privacy, where the EU does set out requirements, there are still substantial differences in the way each country's government and courts implement and interpret those laws.

Differences in employment law between countries are another common area of relevance to investigations. It is common for an investigation to find that an employee was involved in wrongdoing and should be sanctioned or terminated. While it is critical that companies take robust action against employee misconduct, it also is important to follow local regulations when doing so. For instance, certain countries require employers to first notify an employee if he or she is going to be terminated for cause, and provide them with the opportunity to respond. Even if the evidence obtained during an investigation appears to implicate an employee, it is important to bear in mind that the employment laws in some countries are very strict, and set very high standards that must be met in order to justify a termination for cause.

Language differences

Language differences have an impact on many aspects of cross-border investigations and were ranked as a top challenge in cross-border investigations by nearly a third of the respondents in KPMG's survey.

For an investigator unfamiliar with a language, analysing documents or electronic data by loading the information into automated translation software is inadvisable: such translations are commonly riddled with inaccuracies, and may also fail to pick up on subtle yet critical distinctions that an investigator familiar with the language would spot.

Unless witnesses are very comfortable communicating in a second language, it may be desirable to interview them in their native language. Although it is possible to conduct interviews through a translator, the efficiency and effectiveness of interviews is generally better when conducted directly by an experienced investigator with knowledge of the local language, including understanding of relevant local dialects and slang terms.

It's common that the progress or results of an investigation may need to be communicated in a common 'group language'. Where some or all of the investigative work is being completed in another language (or languages) it is recommended to establish early in the process to what extent original materials, interview notes, analysis and findings need to be translated and at what stage. This will enable sufficient time to be planned for any required translation.

Seeking help

Few companies operating internationally can realistically maintain investigative capabilities in every country in which they operate, and a central investigator working in an unfamiliar jurisdiction can face daunting challenges. Seeking support from advisors with knowledge and experience of the environment can result in quicker, more efficient and more effective investigations.

To discuss the issues raised in this article further, please contact

Dimitar Georgiev
Manager, Forensic
T: +420 222 123 640
E:dgeorgiev@kpmg.com

Stepanka Cerna
Supervisor, Forensic
T: +420 222 123 568
E: scerna@kpmg.com

kpmg.com/cee

Our practice

Our Forensic practice in Central and Eastern Europe is accredited by KPMG's Global Forensic Executive Committee, which ensures that our professionals have sufficient experience and training. We apply the KPMG global methodologies and quality control procedures. This sets a baseline for consistency and high quality in our work.

The practice is led by two partners and is staffed with a diverse mix of professional staff that includes qualified chartered accountants, lawyers, data analysts and investigators. Dedicated forensic practitioners are located in countries across Central and Eastern Europe.