

# INTERNATIONAL INVESTIGATIONS



# It's 4 pm on a Friday afternoon...

- Your client's General Counsel gets a call from the company's CFO, who is based in London;
- The CFO has noticed an unusual number of product returns from the company's South Asian customers... and didn't know that the products had a right of return;
- A whistle-blower has been hinting at irregular business practices in the South Asian business division;
- The company trades depository receipts on the NYSE and is scheduled to release its quarterly financial results in 10 days;
- 4:45 pm.... You get the call from the General Counsel.



# What do you do next?

- How does the company figure out whether something unlawful has happened?
- Should there be an investigation?
- If so, who should undertake it?
- Should the outside counsel be involved?
- Will the review be privileged?
- When does the company have an obligation to report the issue to the UK or US regulators?

# Challenges faced in conducting a cross-border investigation

- Foreign Evidence
- Multilingual Computer Data
- Foreign Nationals
- Foreign Languages
- Parallel Domestic and/or Foreign Investigation
- Foreign Laws and Culture
- Foreign Privileges and Immunities

# Substantive Considerations

- Preliminary Consideration: Which regulator is likely to exercise jurisdiction over the allegedly wrongful conduct?
- Subject Matter Jurisdiction
- Personal Jurisdiction
- Forum Non Conveniens

# Procedural Considerations

- The Organization and Culture of the Corporation
- Person in Charge of Investigation
- The Investigation Team:
  - Language
  - Culture – “Maintaining face”
  - Knowledge of Foreign Laws



# Collecting Evidence Abroad

- The Hague Evidence Convention
- Letters Rogatory
- Mutual Legal Assistance Treaties (MLATs)
- Memoranda of Understanding (MOUs)
- *Caveat: Be wary of “collecting evidence” in foreign jurisdictions*

# Potential Barriers to Obtaining Information

- The EU Directive on Data Privacy
- Blocking Statutes, e.g. French Penal Law
- Local laws, politics, and culture

# Other Considerations

- Corporate Miranda
- Attorney-Client Privilege: Now You See It, Now You Don't
  - Common law systems v. Civil law systems
  - Outside counsel v. In-house counsel
- Privilege Against Self-Incrimination
  - Differences in how a witness may “take the Fifth”

# Disclosure

- Whether, When, and How to disclose the “problem” or the result of the investigation;
- Which regulatory, government or agency comes first;
- Timing of disclosure;
- Leaks and media

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