

Investigations: ESG and the Rise of Transparency

Basic Tips for Conducting an Investigation



Investigations Are Becoming More Commonplace

The last few years have seen global developments (Occupy Wall Street, #metoo, Black Lives Matter and climate change activism) that have given rise to increased demands in accountability and transparency across virtually all sections of society. This demand for accountability and transparency goes way beyond workplace misconduct and extends to societal expectations on supply chain integrity involving environment, social and governance issues (ESG).

There is an increasingly heightened expectation that allegations of personal and corporate wrongdoing are acknowledged and taken seriously. Taking them seriously often means conducting a robust and credible investigation. This is not a straightforward task, it is complicated by the fact that, in many cases, allegations are historical in nature and the protagonists are often fellow employees and members of the same team. The process is further complicated by the fact that the investigation needs to be conducted with as little disruption to the business as possible, and more recently, under the current reality of remote working.

Investigations can be costly, in terms of both financial resources and opportunity cost. However, the consequences of doing nothing often leads to existential threats in the form of unlimited fines from enforcement authorities, loss of trust from customers or consumers and irreparable reputational damage. They say a stitch in time saves nine and this is probably the best proverb to articulate the virtues of a properly conducted investigation.

Why Choose Us?

We have a team of experienced lawyers who are conducting a wide range of independent investigations for clients across a number of sectors and jurisdictions. The full-service nature of our practice, coupled with our global footprint, means that we are able to call upon subject matter experts across a number of areas providing a wraparound approach, which is important for our clients.

Our experience and expertise is demonstrated by the number of high-profile and sensitive investigations we are instructed to carry out. From complex financial and fraud matters, through highly sensitive abuse and public interest cases, to allegations of harassment, bullying and discrimination in the workplace, our expert team has a proven track record of supporting clients when they need it the most.

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Basic Tips for Conducting an Investigation

We hope to share some lessons we have learned from our global investigations practice and some basic tips for ensuring that an investigation achieves its intended purpose.

Assembling the right team

Knowing the “key” reason for the investigation

Knowing your “end goal”

Consider the remote working challenges

Assembling the Right Team – Maintain Independence

This is extremely important because a misstep, even at this early stage, could derail and undermine the whole investigation. It is important to ensure that there is no real or perceived conflict of interest.



Avoid personal interest conflict – It is not acceptable for someone with a personal interest in the outcome of the investigation to have a decision-making or fact-finding role within it. This applies whether the investigation is being conducted internally or via an appointed third party (an external law firm for example) or an independent panel.



Consider the dynamics – When conducting the investigation internally, you will need to consider line management, personal and other relevant relationships to ensure that any real or perceived conflicts are eradicated. It is common, for example, for a non-executive director or a senior leader from a different department to oversee the investigations.



Strive for genuine independence – Achieving genuine independence and managing these potential conflicts can be challenging even in large organisations. The problem is even more acute in smaller organisations. This is especially the case when dealing with allegations against senior management, regardless of the size of the organisations.



If in doubt, contract it out – It is for this reason that organisations are increasingly turning to law firms or investigation consultancies for help with investigations. The added advantage of instructing law firms is the potential benefit of enjoying legal privilege in certain circumstances.

Developing Terms of Reference – What Is the Key Reason for the Investigation?

What question(s) is your investigation seeking to answer? Being very clear about this will enable you to create the best possible Terms of Reference, which are an extremely important part of an effective investigation.

If you are investigating because of a notice or action from an external regulator – tailor your scope to their instruction/requirements.

Develop Your Key Points – What Is the End Goal?

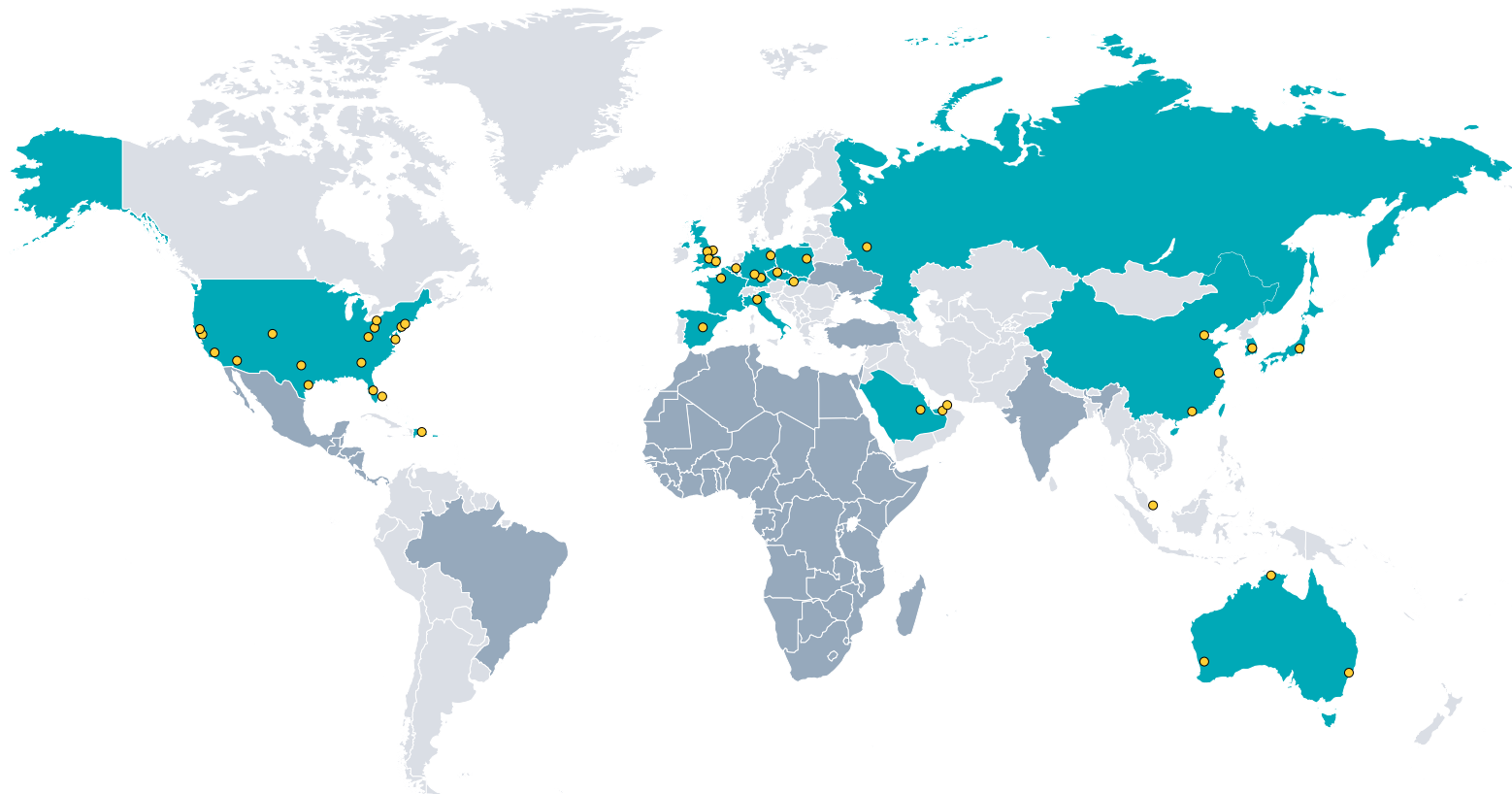
The aims of the investigation must be defined as specifically as possible. In some cases, it may be absolutely necessary to identify every single aspect of the alleged mischief – for example, when detailing instances of harassment or instances of fraudulent conduct.

Where possible, you should assess whether it is appropriate to restrict the scope to answering a specific question, which will enable you to reach findings more quickly and efficiently. This is crucial to avoid unnecessary broadening of the scope, which will result in costs increasing, time being lost and issues being muddled.

Be Prepared – Conducting Remote Investigations

As we are in the midst of a global pandemic and many investigations are being conducted remotely, it is imperative that you know and test your technology (Zoom, Teams, etc.). While this approach creates efficiencies by way of savings on travel time and costs, we have observed that it creates challenges with respect to managing confidentiality, poor connectivity and, perhaps most of all, losing the ability to assess properly the credibility of witnesses in a face-to-face interview.

We Are Where You Are



Our Locations

Abu Dhabi	Böblingen	Columbus	Frankfurt	Los Angeles	Moscow	Perth	Santo Domingo	Tampa
Atlanta	Bratislava	Dallas	Hong Kong	Madrid	New Jersey	Phoenix	Seoul	Tokyo
Beijing	Brussels	Darwin	Houston	Manchester	New York	Prague	Shanghai	Warsaw
Berlin	Cincinnati	Denver	Leeds	Miami	Palo Alto	Riyadh	Singapore	Washington DC
Birmingham	Cleveland	Dubai	London	Milan	Paris	San Francisco	Sydney	

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Israel	Ukraine

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