

Protecting Privileges in Cross-Border Investigations

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Tuesday morning as you sip your coffee, your telephone rings from your overseas transactional partner, asking if you can assist an ongoing sensitive internal investigation. The client, a publicly traded company with offices on multiple continents, is facing allegations of potential financial accounting irregularities. The client started its own investigation months earlier, prompted by an inquiry from a foreign government. In-house counsel based overseas has spearheaded the investigation to date, but now the company has received an informal inquiry from a United States regulatory agency covering similar topics. Your partner concludes that now is the time to get U.S. defense counsel involved—you.

The primary witnesses are located in several foreign countries. Time is of the essence. On the flight overseas, you are expected to read in-house counsel's interview memoranda, and you are to begin questioning employees as soon as you land. As the plane taxis across the tarmac, you ask yourself: Is it safe to assume that your interviews of the foreign-based employees will be protected by the attorney-client privilege? Should you instead be considering bringing the witnesses to the United States? What about the memoranda of in-house counsel's prior employee interviews; are those protected?

... You are thus wise to consider, early, how best to protect those communications from compelled disclosure. This article focuses on three issues that are key to analyzing privilege in the international context.

Excerpted from *ABA Litigation*. To read the full article, please [click here](#).