

Navigating issues in cross-border investigations

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Cross-border investigations, which typically involve multiple jurisdictions and multiple authorities, are becoming increasingly complex and burdensome. In their article published in *Financier Worldwide Magazine*, Osler lawyers Stéphane Eljarrat, Frédéric Plamondon and Emily Lynch suggest organizations facing multijurisdictional investigations should consider engaging with each foreign authority involved to mitigate the risks, to coordinate the effort and to consider whether a global resolution is possible.

An important consideration is whether privileged materials disclosed to a foreign authority retain their privileged status. For example, if an investigator from the U.S. Securities and Exchange Commission formally requests the disclosure of information from an entity in the United Kingdom (U.K.), which is protected by privilege under U.K. law, it is uncertain whether agreeing to such a request would constitute a waiver of privilege. Further, the answer may differ depending on whether the disclosure of information to the foreign authority was voluntary. To mitigate such uncertainty, it is advisable to include certain reservations before disclosing information, such that its disclosure to a foreign authority does not constitute a waiver of the privilege that shields it in its home jurisdiction.

Where multiple jurisdictions are involved in an investigation, it is not uncommon for an organization to be called upon to transfer data across national borders by a foreign authority or regulator. In such a case, it is critical for the organization to consider the application of data protection and privacy laws in the jurisdictions involved, which may impose certain restrictions on the transfer of data cross border. Compliance with data protection requirements in the organization's home jurisdiction may not equate to compliance in the foreign investigation authority's jurisdiction.

With cross-border investigations becoming more common, it is critical that companies consider how best to deal with the many complex issues that may arise when faced with parallel investigations. The various approaches to the laws governing privilege and data protection internationally demonstrate the importance of consulting local counsel in the jurisdictions involved and to engage with foreign authorities as early as possible in the process.

[Read the full article in *Financier Worldwide Magazine's* December 2021 Issue](#)