

January 15, 2026

Effective Management of Global Cross- Border Investigations

GIBSON DUNN



MCLE Certificate Information

MCLE Certificate Information

- Approved for 1.0 hour General PP credit.
- CLE credit form must be submitted by ***Friday, January 30th.***
- Form Link:
https://gibsondunn.qualtrics.com/jfe/form/SV_9BmXRYLV9W5WMwm

Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.

- Please direct all questions regarding MCLE to CLE@gibsondunn.com.

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AGENDA

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- 02 Potential Stakeholders in Cross-Border Investigations**
- 03 Best Practices in Running Cross-Border Investigations**
- 04 Managing Conflicting Requirements Across Jurisdictions**
- 05 Turning Points in Cross-Border Matters and Managing Spill-Over Risks**
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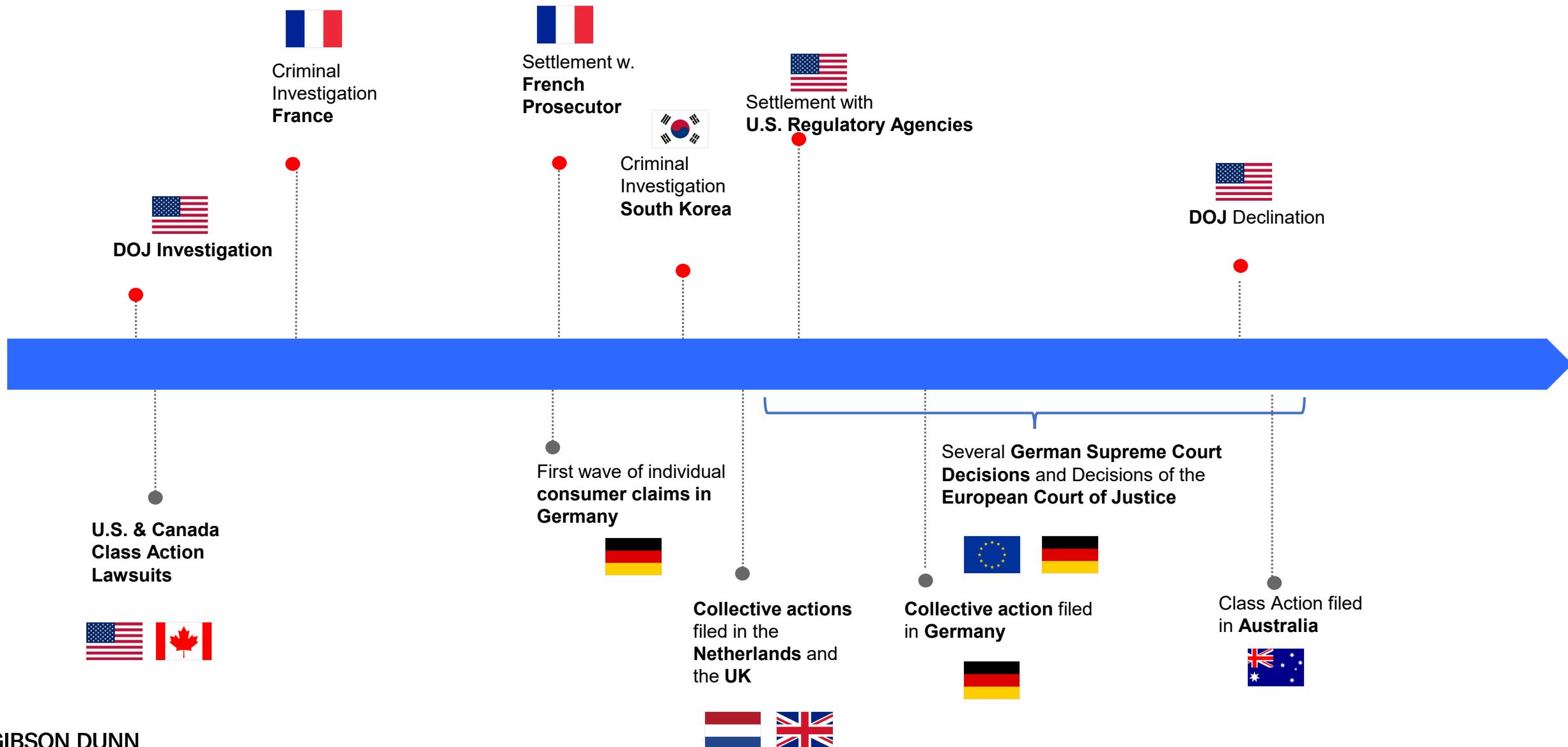
CHALLENGES OF CROSS-BORDER INVESTIGATIONS

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Introduction

- Cross-border investigations come with significant **jurisdictional complexities and risks** that ultimately all relate to the **involvement of multiple regulators, enforcement agencies, and potentially private plaintiffs**.
- The continuously increasing **collaboration between enforcement agencies in different countries**, as well as the **interest of the media, NGOs, and private plaintiffs** in such cases, bear a particular risk of additional enforcement actions and litigation abroad.
- Carefully navigating (often conflicting) **jurisdictional complexities**, managing **spillover risks**, ensuring **coordination among workstreams**, and **adequately handling all involved internal and external stakeholders** are crucial elements in successfully managing and resolving cross-border cases.

Illustrative Case Study



POTENTIAL STAKEHOLDERS IN CROSS-BORDER INVESTIGATIONS

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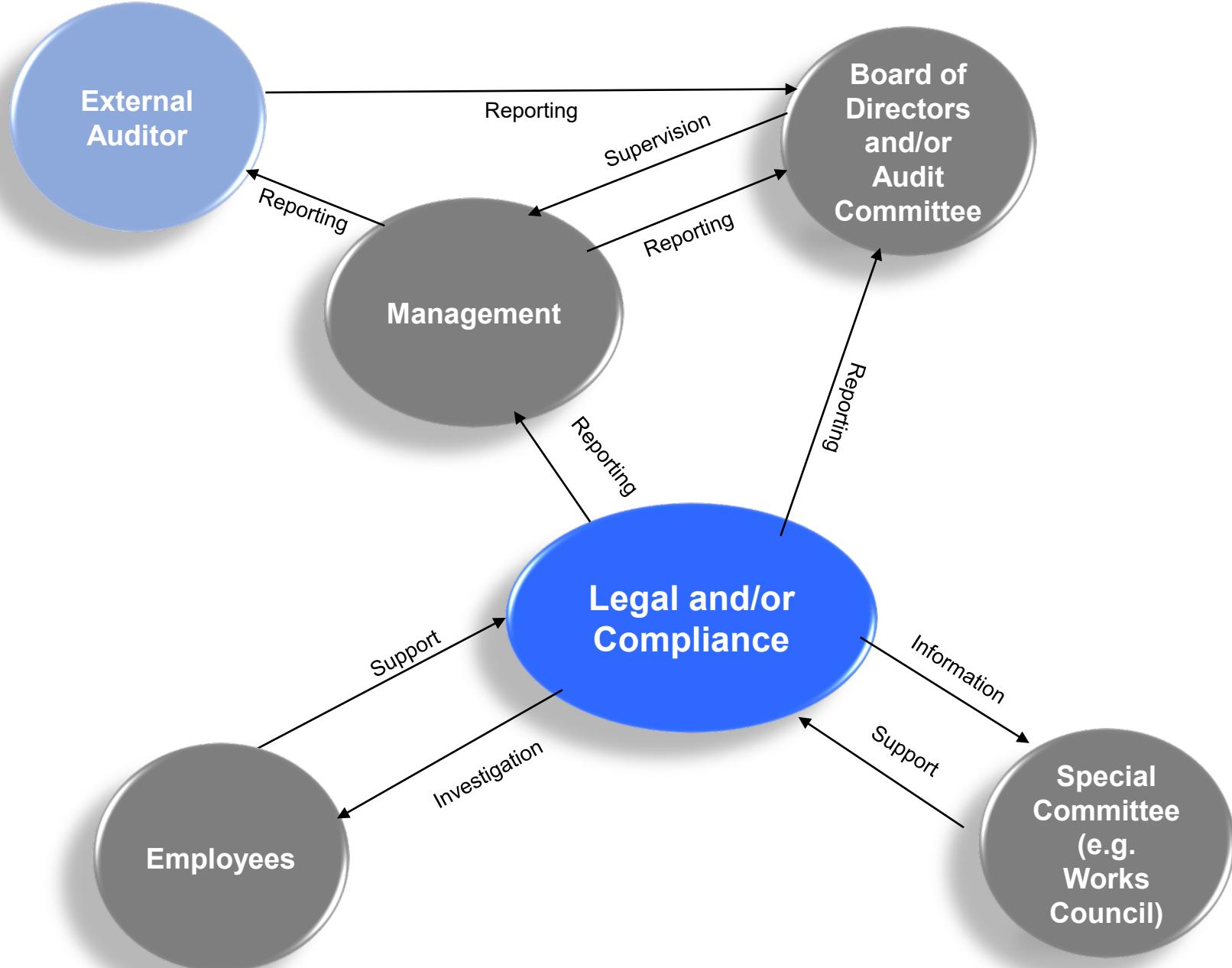
Determining Key Internal Stakeholders

Investigations usually implicate **internal** and **external** stakeholders.

Internal stakeholders may include corporate management and, as applicable, boards of directors.

- A threshold question for any investigation is **who should be involved with, and oversee, the investigation**. It is important to determine early on whether there is a need for **independence** and to **identify and manage potential conflicts**.
 - An investigation may be viewed as more credible if it is overseen by an independent body (e.g., special committee of the board).
 - Investigation reporting lines will depend on what areas/departments of an organization have been involved in the alleged misconduct.
 - **Where to report findings** depends on the nature of the investigation and structure of the organization. For example, it may be appropriate to report findings to senior management, the board of directors, or both.

Internal Stakeholders Cross Border Scenarios



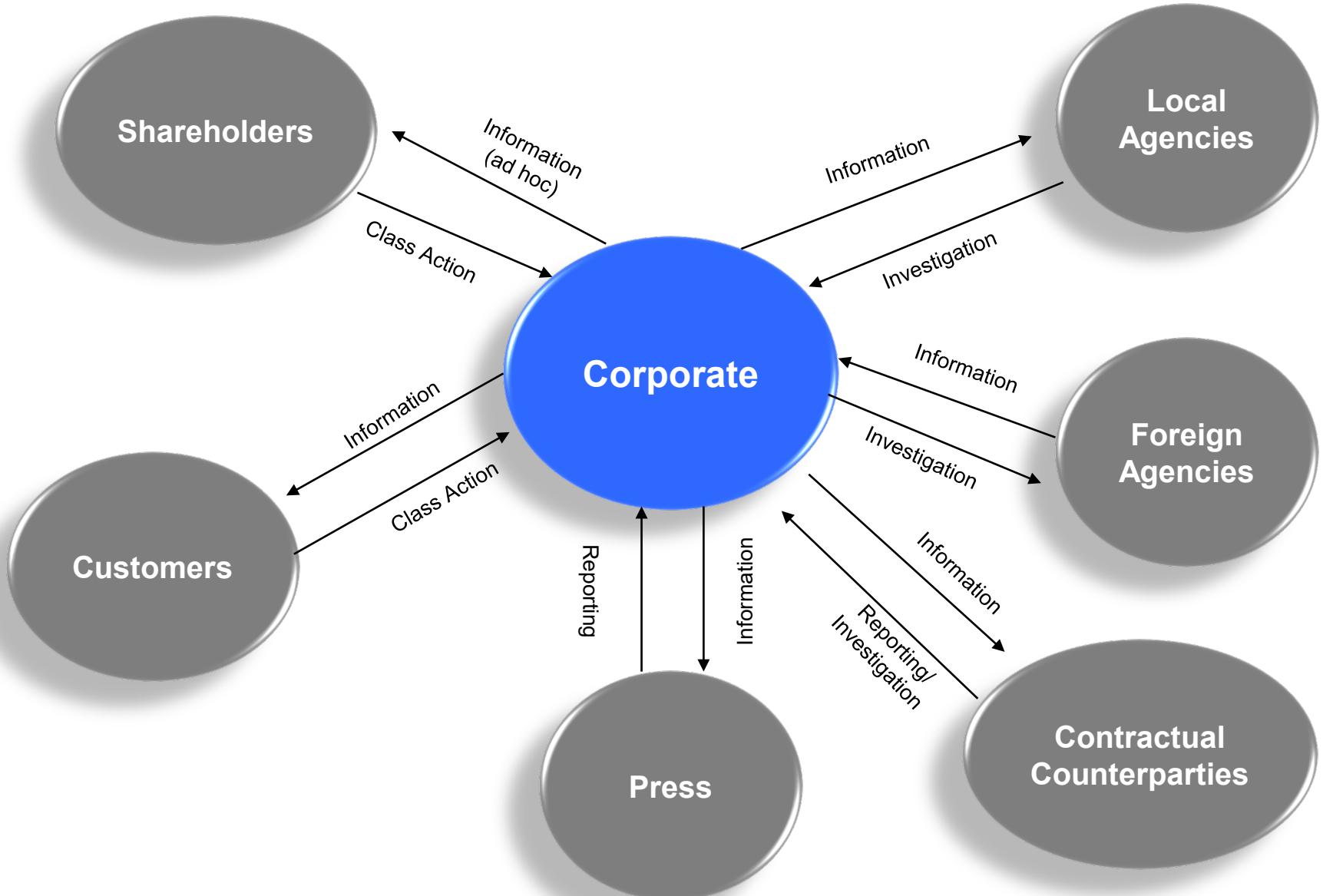
Determining Key External Stakeholders

External stakeholders will vary based on the involvement in the investigation, if any, of **government agencies**; whether and to what extent the organization has **regulatory reporting requirements**; and the nature of any notice and reporting obligations vis-à-vis **other third parties**. These may include:

- Government agencies (domestic and/or foreign; federal, state, and/or local)
- Supranational institutions (e.g., multilateral development banks (MDBs))
- Counterparties to contractual agreements
- NGOs
- Press and other media outlets, including social media

External Stakeholders

Cross-Border Scenarios



BEST PRACTICES IN RUNNING CROSS- BORDER INVESTIGATIONS

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Best Practices for Multi-Jurisdictional Matters

Strategies to Mitigate Potential Risks

- 1 Institute appropriate policies and practices to address risks from cross-border investigations **before they happen** (e.g., dawn raid guidance)
- 2 Ensure consistent approach in complying with relevant **legal requirements** across workstreams (e.g., under blocking statutes, GDPR, and applicable privilege regimes) and implement policies to reduce data-related risks in connection with collection and cross-border transfer
- 3 Scope **risk-based investigation** and **leverage tools** (e.g., AI and other technology) to identify issues early on and ensure efficient use of resources
- 4 **Understand “disclosure osmosis”** – facts, data, and information shared with an enforcer in one jurisdiction should be consistent with that shared with another enforcer in a different jurisdiction
- 5 Thoughtfully monitor and – to the extent possible – mitigate **spillover risks**

Best Practices for Multi-Jurisdictional Matters

- 6 Understand **regional risks and cultural differences**
- 7 Carefully manage all **internal and external stakeholders**
- 8 Consider when and how to **coordinate reporting to relevant authorities**
- 9 Ensure thorough and comprehensive **documentation** of investigation findings to avoid blind spots or inconsistencies in potential civil litigation, with documentation protected as appropriate under the attorney-client privilege, work-product doctrine, and other appropriate privileges
- 10 **Maintain and update compliance programs** based on appropriately calibrated risk assessments and lessons-learned from internal and external investigations

MANAGING CONFLICTING REQUIREMENTS ACROSS JURISDICTIONS

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Cross-Border Considerations

Cross-Border Complications in Multi-jurisdictional Investigations

Data Privacy Laws

(e.g., GDPR (Europe); Brazil, Canada, China, India, Saudi Arabia)

Blocking Statutes

(e.g., Switzerland, France, China)

Employment Laws

(e.g., restrictions on employee terminations)



Different Disclosure Requirements and Considerations

Varying concepts and treatment of **Attorney-Client Privilege and Protections**

Mandatory involvement of **Specific Committees** (e.g., Works Council in Germany)

The US Perspective - Privilege Protection for Internal Investigations

Attorney-Client Privilege

A communication:

- Made between an attorney and a client (or between individuals with a “need to know”);
- In confidence; and
- For the purpose of seeking, obtaining, or providing legal advice.

- The attorney-client privilege protects **confidential communications** where there is an expectation that the communication will not be disclosed.
- The attorney-client privilege protects only communications between the attorney and client; **it does not protect the underlying facts.**
- The attorney-client privilege attaches only when an **attorney acts in their capacity as an attorney.**

- There is a current **circuit split** in the United States **related to whether “dual-purpose” communications that provide both legal and non-legal advice are privileged.** At least four circuits apply the “primary purpose test” and not the “because of” test.

The Attorney-Client Privilege Varies in Scope Across Jurisdictions

English Law

Legal Advice Privilege

- confidential communications
- which pass between a client and their lawyer
- which have come into existence for the dominant purpose of giving / receiving legal advice.

Litigation Privilege

- confidential communications
- between parties or their solicitors and third parties for the purpose of obtaining information or advice
- made for the sole or dominant purpose of conducting that litigation where there is litigation pending, reasonably contemplated or existing
- and that litigation is adversarial, not investigative or inquisitorial.

German Law

- Materials seized at the client's premises in the context of a criminal investigation are only protected if they stem from an attorney-client relationship with criminal defense counsel (Strafverteidiger) (BVerfG decisions 27.06.2018 Jones Day / Volkswagen AG)
- The functional role of the lawyer is decisive, not merely their status as an attorney.
- Documents prepared by in-house counsel do not enjoy the protection of the attorney-client privilege.
- A potential "waiver" is limited to the specific document or information provided, i.e., no subject-matter waiver.

EU Law

- EU legal professional privilege applies, e.g., in antitrust investigations conducted by the European Commission.
- Communication with and legal advice by external legal counsel generally protected.
- Recent decision by the European Court of Justice (ECJ) expands the protection under the legal privilege when EU law is being applied by EU institutions of national authorities (competition, sanctions, AML, etc.): protection covers also legal advice and does not necessarily require a link with judicial proceedings (e.g. ECJ judgment of 8 December 2022 C-694/20 Orde van Vlaamse Balies and others).

Attorney-Client Privilege – Case Study

Tensions between different jurisdictions can arise in connection with cross-border investigations. The differences in scope between the U.S. and German attorney-client privilege, for example, can create difficulties that are not easily resolved in investigations involving both the U.S. and Germany.

Attorney-client privilege under US law

- Correspondence between attorney and client that takes place in order to obtain legal advice in anticipation of legal proceedings

Prohibition of seizure under German law

- Prohibition to seize correspondence between criminal defense counsel and the client under Sections 97, 53 (1) sentence 2 StPO

- For example, to fully cooperate with German enforcement authorities, companies may need to disclose information which may lead to an inadvertent waiver of the U.S. attorney-client privilege, e.g.:
 - Interview notes/memoranda
 - Investigation reports
 - Other investigation work product
- A disclosure may result in such information having to be disclosed in (foreign) court proceedings (discovery).

Data Privacy

- 144 countries around the world have passed some form of **privacy laws**. Applicable requirements stipulated by these laws need to be considered in the context of cross-border investigations, in particular in the context of **processing and reviewing employee data**.
- While **legitimate interests of a company** typically form a valid legal basis for processing personal data for the purposes of an investigation under these laws, any data processing typically needs to **comply with a number of fundamental principles**, e.g. the principles of data minimization, proportionality, and necessity, under the EU GDPR.
- Data privacy laws typically also govern a potential **transfer of personal data to a foreign country**.
- Applicable privacy laws can have **significant practical implications** for cross-border investigations. A careful assessment of applicable privacy requirements at the outset of a cross-border investigation is highly recommended.

Employment Laws (1/2)

Local employment law requirements can pose additional challenges in cross-border investigations.

Questions to be considered:

- What are the specific obligations of the employee to cooperate in an internal investigation? E.g., does the matter concern employee's direct duties?
- What are the requirements for involving company special committees (e.g., works council in Germany) and in what cases?
- What kind of information about the investigation must be provided to the local special committees, if any?
- What specific requirements apply when conducting employee interviews in the context of a suspicion-based dismissal?
- What are the special limitations for termination for cause or other disciplinary actions? (e.g., two-week time limit in Germany, two-month time limit in France)

Employment Laws (2/2)

Companies must consider whether, and to whom, to provide pool counsel or separate individual counsel when employees are reviewed as part of an investigation.

Questions to be considered:

- What interests do the employees share?
- How likely are conflicts between current/former employees requiring representation?
- What happens in the event a conflict arises during the representation?
- How segregable are the issues/charges?
- Can information learned by pool counsel be used for the benefit of all clients in the pool?
- Should executives receive individual counsel?
- Criminal investigation targets should receive individual counsel.
- Advancement/indemnification issues are determined by company bylaws.

Blocking Statutes

Blocking Statutes

- Some countries, e.g., France and Switzerland, provide for blocking statutes that **restrict / prohibit the collection of evidence and disclosure of sensitive information or evidence** to foreign authorities in the context of legal proceedings unless conducted by way of mutual legal assistance.
- Blocking statutes generally aim to **protect national interests and the sovereignty of local authorities**.
- In many cases, violations of blocking statutes carry significant sanctions – e.g., **significant monetary penalties and, in some cases, imprisonment**.



Practical Implications

- Blocking statutes typically **significantly impact evidence collection and reporting** to foreign authorities in cross-border investigations.
- In many cases, the investigating enforcement agency will be required to submit a **request under the respective mutual legal assistance treaty (MLAT)**, which can lead to significant delays in an investigation and additional administrative hurdles.

TURNING POINTS & MANAGING SPILL-OVER RISKS

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Turning Points in Multi-Jurisdictional Cases with Particular Spill-Over Risks

- 1 **Publications made as part of regulatory/criminal proceedings:** Any information about ongoing regulatory or criminal proceedings (e.g., a published FDA warning letter or a publicized DOJ settlement) may lead to additional actions or litigation.
- 2 **(Cross-border) cooperation among agencies:** Any cross-border coordination among enforcement agencies can lead to additional enforcement proceedings in the countries involved.
- 3 **Ad hoc publicity:** Ad hoc announcements regarding the initiation or conclusion of (foreign) proceedings or related provisions made by the company may lead to additional law enforcement or litigation.
- 4 **Negative media coverage:** Negative press can be a catalyst in triggering additional enforcement actions or litigation (in different countries).
- 5 **Whistleblowers:** Whistleblower reports can trigger additional regulatory or criminal proceedings. The U.S. with its whistleblower reward programs poses particular risk. National whistleblowing laws apply across the EU. Companies should ensure they have a system in place to respond to whistleblower and investigate allegations, with protections applying globally.

Spotlight: Reporting Findings to U.S. Government Agencies

- In making any reports to U.S. government agencies regarding findings from internal investigations, particularly but not only where cross-border conduct is at issue, organizations should:
 - As applicable, **seek protection for reports** under Freedom of Information Act exceptions or state/local-law equivalents; grand jury material; and settlement discussions;
 - **Ensure that reports do not address privileged material** or otherwise risk a wider waiver of materials and information protected by the attorney-client privilege and/or work product doctrine; and
 - **Account for the risk that reports may be further disclosed** beyond their intended audience(s).

Spotlight: Conflicting Expectations re Communication Practices

DOJ's guidance on communication policies does not address the complexities of potentially applicable local data privacy laws, particularly when employees use their own mobile devices.

- The guidance allows prosecutors to consider a corporation's relevant code of conduct as well as applicable privacy, security, and employment laws.

Multinational corporations must navigate possibly conflicting applicable local data privacy laws, blocking statutes, and legal or securities-related requirements.

- DOJ may draw adverse conclusions regarding a company's ability to access and produce electronic communications during an investigation if the corporation lacked consistency or transparency in its explanations or approach.

Compliance strategies to mitigate potential issues include:

- Mapping all local privacy, employment, and data-transfer restrictions in each jurisdiction; and
- Documenting the corporate rationale behind providing or restricting access to data in certain jurisdictions, including applicable local laws that may restrict access.

RESOLVING CROSS-BORDER INVESTIGATIONS

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Resolving Cross-Border Investigations

- Where an enforcement action seems likely in multiple jurisdictions, organizations should seek to minimize the potential impact and collateral consequences of a multijurisdictional resolution by **seeking a global resolution**, including:
 - **Agreement** on a consistent statement of facts/wrongdoing and admissions, as necessary;
 - **Crediting** of fines and other monetary impacts (e.g., disgorgement; restitution);
 - June 2025 DOJ Criminal Division memo addressing foreign crediting
 - **Crediting and appropriate recognition** of the company's cooperation and remediation;
 - **Appropriate coverage** of past misconduct;
 - **Consolidation** of or coterminous resolution requirements (e.g., compliance reporting; compliance monitors; cooperation obligations); and
 - **Coordination of agency press releases** to limit public disclosure of the matter to "one bad news day."

TRENDS & PREDICTIONS

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Trends & Predictions

- **Focus on individuals:** U.S. and international enforcers are continuing to stress individual culpability in the context of investigations and resolutions.
- **Use of emerging technologies and data analytics:** Enforcement agencies across jurisdictions are using AI and other technologies to analyze data in support of more efficient investigations.
- **Investigations driven by non-U.S. enforcers:** Following recent reorganization within the U.S. DOJ, we expect non-U.S. authorities to fill potential enforcement gaps.
 - UK, Swiss, and French International Anti-Corruption Taskforce
 - Agreement on EU Anti-Corruption Directive
- **Crossover in investigation subject-matter:** Against the backdrop of updated administration priorities and DOJ reorganization, many investigations will continue to span issues relating to fraud, anti-corruption, money laundering, and sanctions.
- **Shift to formal programs for self-disclosure and cooperation prompting strategic considerations around voluntary self-disclosures:** Other countries are increasingly following the U.S. example in encouraging voluntary self-disclosure. Organizations facing cross-border investigations should consider applicable frameworks in weighing their disclosure calculus. For example:
 - Dutch Public Prosecution Office January 2025 rules
 - UK SFO April 2025 guidance

CONCLUSION

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Upcoming Programs

2025/2026 White Collar Webcast Series

Date and Time	Program	Registration Link
<p>Wednesday, January 28, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET</p>	<p>Commodities Enforcement and the CFTC Presenters: Amy Feagles, Jeffrey Steiner, David Burns</p>	<a data-bbox="2298 433 2485 462" href="#">Event Details
<p>Monday, February 2, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET</p>	<p>Navigating Blocking Statutes in Government Investigations Moderator: Patrick Stokes Presenters: Courtney Brown, Amy Feagles, Darren LaVerne</p>	<a data-bbox="2298 807 2485 836" href="#">Event Details
<p>Tuesday, February 3, 2026 9:00 AM – 10:30 AM PT 12:00 PM – 1:30 PM ET</p>	<p>U.S. Criminal Law and Corporate Enforcement Developments in 2025 Presenters: Dani James, John W.F. Chesley, Stephanie Brooker, Melissa Farrar, Michael Diamant, Stuart Delery</p>	<a data-bbox="2298 1205 2485 1234" href="#">Event Details



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Amy Feagles is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher. She practices in the Firm's Litigation Department and is a member of its Antitrust and Competition and White Collar Defense and Investigations Practice Groups. Amy's practice encompasses a wide range of experience in internal investigations, regulatory and criminal investigations, and complex commercial litigation across a range of industries, including financial services, government contracting, healthcare, and international shipping. She has substantial experience in the defense of multinational companies and individuals in connection with U.S. grand jury investigations, financial regulatory inquiries, and international cartel investigations by U.S. and international antitrust agencies, including the U.S. Department of Justice and European Commission. Amy also represents clients in complex antitrust litigation matters, including class actions involving allegations of price fixing and related claims in federal courts.

EDUCATION

Duke University
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Duke University
Bachelor of Arts

Amy has been recognized by *Legal 500* as a "Recommended Lawyer" in Financial Services Litigation in its 2025 guide. She was also named by *Best Lawyers* as a 2023 "One to Watch" in both Antitrust Law and Criminal Defense: White Collar.

Amy graduated *cum laude* from Duke University School of Law, where she served as an Executive Editor of the *Journal of Law and Contemporary Problems*. Amy also received a Bachelor of Arts degree *cum laude* and with Distinction from Duke University. Prior to law school, Amy worked at the U.S. Department of State, where she oversaw the implementation of foreign assistance programs in Iraq. In that capacity, she also developed and coordinated policies with respect to human rights and governance in Iraq.

Amy's full biography can be viewed [here](#).



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Katharina Humphrey is a partner in the Munich office of Gibson Dunn. She is a member of the firm's White-Collar Defense and Investigations Practice Group.

She advises clients in the area of corporate governance and compliance. She has significant expertise in the areas of anti-bribery compliance – especially regarding the enforcement of German anti-corruption laws and the U.S. Foreign Corrupt Practices Act (FCPA) –, technical compliance, as well as sanctions and anti-money-laundering compliance.

Katharina advises companies in connection with internal corporate investigations, both nationally and internationally and on the structuring, implementation and assessment of compliance management systems. She represents companies before domestic and foreign authorities during associated criminal and administrative proceedings and is experienced in advising companies in connection with FCPA monitorships or similar monitor functions.

The Legal 500 Deutschland 2025 and *The Legal 500 EMEA 2025* listed her again as "Next Generation Partner" in the field of Compliance. In the inaugural 2025 edition of *Chambers Germany*, she was ranked for Compliance. *JUVE* named Katharina to its "40 under 40" list in its January 2019 issue, presenting the rising stars among Germany's lawyers under the age of 40.

Katharina studied at the University of Heidelberg, the University of Geneva and the University of Munich (LMU), specializing in International and European Law.

She passed a part of her legal clerkship at the Embassy of the Federal Republic of Germany in New Delhi and the Permanent Mission of the Federal Republic of Germany to the United Nations in New York.

She speaks German, English, French, and Italian.

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Oleh Vretsona is a partner in Gibson Dunn's Washington, D.C. office. He currently practices in the firm's Litigation Department, where he focuses on white collar criminal defense, internal investigations, regulatory inquiries, and corporate compliance. Oleh has represented clients in a wide variety of matters, including matters arising under the U.S. Foreign Corrupt Practices Act, and he has advised clients on structure and implementation of corporate compliance programs.

Oleh has significant experience in representing corporations facing criminal and regulatory charges, conducting internal investigations, and advising clients on the effectiveness of their internal compliance controls. Oleh has managed numerous internal investigations for publicly held corporations involving operations in Eastern Europe, Central Asia, Middle East and North Africa, and various other countries and regions, and conducted extensive fieldwork in more than 25 countries. In the area of corporate compliance, Oleh's work often includes advising on the adequacy of corporate compliance programs, compliance risk assessments and compliance program evaluations, reporting mechanisms, whistleblowing and investigative procedures, internal payment controls, expense approval and reimbursements, third-party controls, and compliance training and messaging, as well as designing and drafting new anti-bribery compliance programs and policies. Oleh also has participated in the FCPA compliance monitorships of Siemens AG and Statoil ASA and has represented clients in World Bank Integrity Vice Presidency investigations.

Oleh received his law degree, *magna cum laude*, in 2006 from the University of Minnesota Law School, where he was elected to the Order of the Coif, and served as an editor of the *University of Minnesota Law School Journal of Law and Inequality*. Oleh also earned a Specialist Degree in Law, with High Distinction, in 1997 from L'viv National University, L'viv, Ukraine, where he was a recipient of the I. Franko Scholarship.

Oleh is fluent in Ukrainian and Russian. He is admitted to practice in New York and the District of Columbia.

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Lora MacDonald is of counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher. She practices in the Firm's Litigation Department, focusing on white collar criminal defense, internal investigations, and corporate compliance.

Lora has extensive experience representing multinational corporations as well as individuals in connection with internal investigations related to potential violations of the U.S. Foreign Corrupt Practices Act ("FCPA") and U.S. antitrust laws. As part of her practice, she regularly interacts with attorneys at the U.S. Department of Justice and the U.S. Securities and Exchange Commission. Lora has particular experience guiding companies towards the resolution of DOJ and SEC investigations, as well as prophylactic and post-resolution corporate compliance. She has advised multiple publicly-traded companies regarding the structure and effectiveness of their anti-corruption compliance programs, working closely with corporate legal and compliance professionals to enhance policies and procedures, third-party due diligence systems, benchmarking, and corruption risk assessments. Lora regularly advises on anti-corruption aspects of proposed mergers and acquisitions, and conducts related due diligence as well as compliance program reviews and pre- and post-acquisition due diligence.

Lora assists clients under investigation by the World Bank Integrity Vice Presidency and companies already subject to World Bank sanction. Lora has also been recognized in the 2026 edition of *Best Lawyers: Ones to Watch® in America* for Criminal Defense: White-Collar.

Lora received her law degree from The University of Michigan Law School in 2013. During law school, she was an Articles Editor for the *Michigan Journal of International Law*. In 2009, Lora graduated with High Distinction from The University of Michigan, where she earned degrees in political science and English.

Lora is admitted to practice in the state of Maryland and the District of Columbia.

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