



Webcast: Navigating Blocking Statutes in Government Investigations

February 2, 2026

GIBSON DUNN

Moderator: Patrick Stokes

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MCLE Certificate Information

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- Approved for 1.0 hour General PP credit.
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Agenda

01 **Introduction**

02 **France**

03 **Switzerland**

04 **China**

05 **Conclusion**

Introduction

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What are 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.

Impact on U.S. Investigations

Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy

“Note: Where a company claims that disclosure of overseas documents is prohibited or restricted due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the existence of such a prohibition or restriction and identifying reasonable and legal alternatives to help the Criminal Division preserve and obtain the necessary facts, documents, and evidence for its investigations and prosecutions.”

Societe Nationale Industrielle Aerospatiale v. U.S. District Court for the Southern District of Iowa: Comity Analysis

- 1. Importance of documents to the litigation**
- 2. Degree of specificity of the request**
- 3. Origin of information**
- 4. Availability of alternative means**
- 5. National interests**
- 6. Extent of hardship to party**
- 7. Good faith of party**

“The French ‘blocking statute,’ . . . does not alter our conclusion. It is well settled that such statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute.”

Technip Deferred Prosecution Agreement

- “. . . the Monitor shall have the authority to take such reasonable steps as . . . may be necessary to be fully informed about the corporate compliance program . . . To that end, Technip shall provide the Monitor with access to **all information, documents, and records that are not subject to protection from disclosure by French data protection** and labor laws . . .”
- “To the extent that the Monitor determines . . . that transmittal of information in such report to the Department **would violate [the Blocking Statue]**, the Monitor shall submit a redacted report to the Department. In such case, the Department will request a copy of the unredacted report through a **mutual legal assistance request** to the appropriate French authority. Technip **shall not object to such request**, and shall cooperate with the French authority to ensure that the unredacted report is transmitted expeditiously to the Department . . .”

06/28/2010

Airbus Deferred Prosecution Agreement

- “The Company, including its direct and indirect subsidiaries and its majority-owned joint ventures, shall, **subject to applicable law and regulations**, cooperate fully with the Fraud Section, NSD, and the Office in any and all matters related to the conduct . . .”
- “The Company’s cooperation pursuant to this paragraph is subject to applicable law and regulations, **including relevant foreign data privacy** and national security laws . . . however, the Company must provide to the Fraud Section, NSD, and the Office **a log** of any information or cooperation that is not provided based on an assertion of law, regulation or privilege, and the Company **bears the burden of establishing the validity of any such assertion.**”

01/31/2020

Key Takeaways

1

Consult with local counsel to conduct legal analysis based on specific facts early.

2

Consider purpose of the data collection.

3

Identify and consider all information sources and whether alternatives exist.

4

Establish document review protocols to prevent inadvertent transmission of data subject to blocking statutes and other legal restrictions.

France

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Background and Purpose

- Cooperation between foreign authorities and jurisdictions primarily governed by international mutual legal assistance treaties (“MLAT”)
- Provides for set processes and safeguard mechanisms (filtering mechanism and exception of sovereignty)
- Purpose of the blocking statute: prohibits circumvention of applicable MLAT

• Act No. 68-678 of **26 July 1968** on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons (**French Blocking Statute, “FBS”**)

• Decree (Décret) No. 2022-207 of **18 February 2022** on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons: set proceedings applicable to requests to the SISSE

...

• Decree No. 2019-206 of **20 March 2019** on the governance of economic security policy: creates and defines the role of the **Strategic Information and Economic Security Department (“SISSE”)**

• Order (Arrêté) of **7 March 2022** on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons: set standard of correspondence with the SISSE

Substantive Provisions

The FBS is a concise piece of legislation:

- Article 1 of the FBS: **prohibition** of any communication in any form (oral, in writing or other), and in any place, of any document or information whether economical, commercial, industrial, financial or technical, to foreign public authorities if such communication may **prejudice the sovereignty, security or essential economic interests** of France or public order => applies to any French citizen, or any individual usually residing in France, or any executive officer, representative, agent or employee of any legal person incorporated in France or established in France.
- Article 1 bis of the FBS: **prohibits** any person from asking, searching for or communicating document or information whether economical, commercial, industrial, financial or technical, aiming at **gathering evidence for the purpose of, or in the context of, foreign judicial or administrative** proceedings.
- Article 2 of the FBS: targeted entities must **inform** the relevant French authorities of any request for such communication.
- Article 3 of the FBS: violation punishable by up to six months imprisonment and/or EUR18,000 fine. (X 5 for legal person according to article 131-38 of French criminal code)
- Exceptions:
 - International Treaties and agreements (includes cooperation agreements?)
 - specific statutes and regulation

Scope



Targeted persons

- Article 1 (Re sensitive info):
 - French nationals
 - Individuals habitually residing in France
 - Directors, officers, representatives, agents or employees of a legal entity having its head office or an establishment in France
- Article 1 bis (Re gathering evidence):
 - Any person involved in the search for, or collection of, documents or information

Targeted proceedings



- Criminal investigation;
- Commercial or civil dispute;
- Administrative inquiry;
- Could include:
 - ⇒ Internal investigations;
 - ⇒ Voluntary disclosures;
 - ⇒ Monitoring / routine inspection by foreign regulator (FDA / SEC);
 - ⇒ Arbitration (CA Versailles, 9 Feb.2017, RG 15/01760).



Targeted perimeter and territory

Includes external counsel (Cass. crim. Executive Life, Christopher X, 12 December 2007, n°07-83.228 - in the context of a commercial dispute)

Primarily applies to acts committed in France and acts committed abroad by French citizens (Articles 113-1 et seq. of the French Criminal Code).

Applicability to foreign citizen acting outside of France to be carefully assessed.

Targeted foreign authorities



- **REGULATION (EU) 2020/1783 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence)
- **Council Regulation (EC) No. 2271/96 of 22 November 1996**, protecting against the effects of the extraterritorial application of legislation adopted by a third country, and of actions based thereon or resulting therefrom;

Procedural Framework

Administrative inquiry (Article 2):



Request for
information from a
foreign authority

Without delay



Referral to the The
French Agency for
Strategic Intelligence
and Economic
Security (“**SISSE**”)

Within one month



Opinion on the
applicability of the
FBS

Additional points:

- **Opinions issued by SISSE are not public;**
- **No official guidelines** set out the scope or practical modalities for applying the French Blocking Statute;
- **Trade associations (AFEP and MEDEF)**, in collaboration with **SISSE**, have published a **very concise guide** for companies, primarily focused on assessing the **sensitivity of the documents or information concerned;**
- **In case of doubt, SISSE should be consulted.**

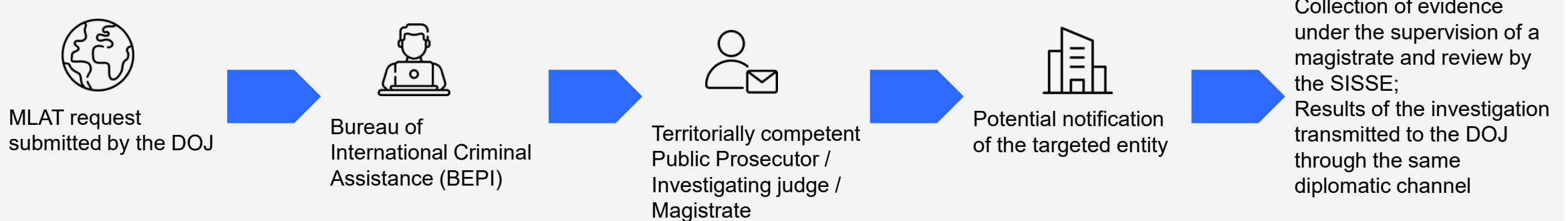
Procedural Framework

Franco-American criminal matters:

Relevant legal framework:

- Treaty on Mutual Legal Assistance in Criminal Matters between the United States of America and France, signed in Paris on 10 December 1998
- French code of criminal procedure: art. 694 and seq. and article 735 and seq

Option 1 :



Option 2 :



Procedural Framework

Franco-American **civil or commercial dispute**:

Relevant legal framework:

- The Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (HCCH 1970 Evidence Convention)
- French code of civil procedure: art. 734 to art. 748

From a U.S. perspective: attention should be paid to the application of the Hague Convention



Contracting State
means a central
authority : **Ministry
of Justice**



Transmits to the
competent authority



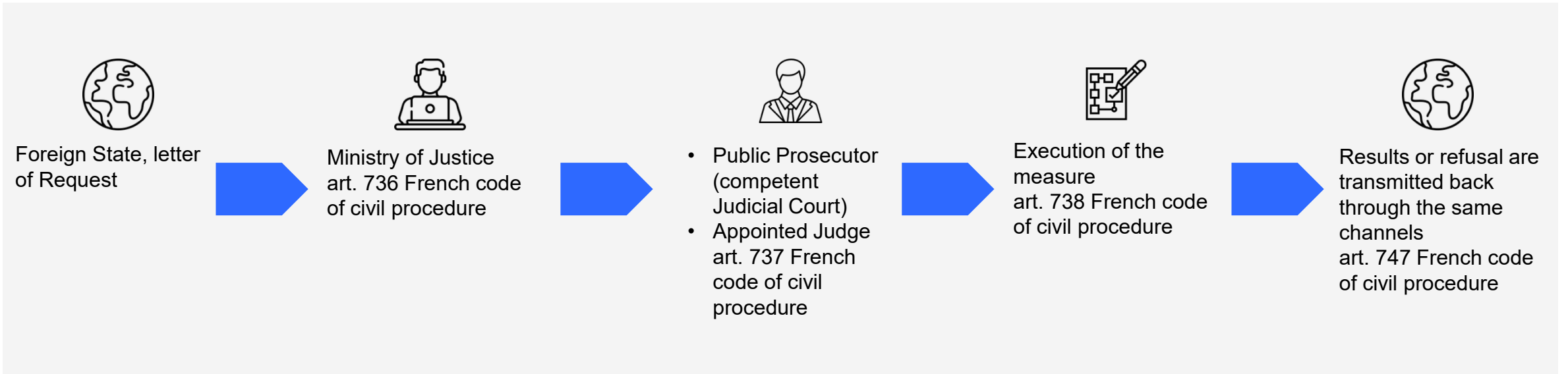
The authority carries
out enforcement and
applies its own
national laws

Procedural Framework

French Letters of Request – Civil Procedure:

Relevant legal framework:

- French code of civil procedure: art. 734 to art. 748



Under Articles 736 et seq. of the French Code of Civil Procedure, a letter of request must be refused where its execution would infringe French sovereignty or undermine the security of the French State.

Focus on U.S. practices

Pre-litigation Hold Notice:

What it is

A pre-litigation hold notice is a formal communication sent in anticipation of litigation, informing recipients of their obligation to preserve potentially relevant documents and information.

What it contains

Such notices typically request the preservation and, in practice, often the identification or disclosure of broad categories of documents, data, and communications, sometimes on very short timelines.

What raises concerns

When addressed directly and unilaterally to French individuals or entities, outside any official international judicial cooperation mechanism, hold notices may create legal uncertainty and expose French recipients to potential conflicts with the French Blocking Statute, particularly where the requests are broad, insistent, or implicitly coercive.

28 U.S.C. § 1782:

What it is

Section 1782 empowers U.S. courts to order the production of documents or testimony located in the United States for use in foreign or international proceedings.

What it contains

It provides a mechanism for judicially supervised evidence-gathering, without requiring recourse to international mutual legal assistance procedures, provided that the statutory criteria are met.

What raises concerns

Difficulties arise when § 1782 is invoked or anticipated to justify direct, informal requests to French parties, thereby bypassing established international cooperation channels and placing French recipients at risk under domestic disclosure restrictions.

Issues

Key Issues and Associated Risks

Circumventing or complying with the French Blocking Statute:

FDA inspection and SEC disclosures

Consequences for companies that refuse to cooperate with the FDA?

Information communicated in a certain context for a certain purpose diverted to pursue another objective:

Class Action

French criminal law: principle of specialty

Confidentiality and privilege:

Risk of overreach and issues relating to the management of confidentiality?

Switzerland

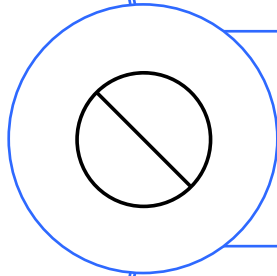
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Art 271 of the Swiss Criminal Code Prohibits:



Conduct on **Swiss territory** on behalf of a foreign state;



Without official approval **of the federal authorities**;



If such acts are **reserved** for a Swiss authority or civil servant.

Recent Legislative Amendments:

- Effective **1 January 2026**, the Swiss government has made amendments to:
 - the Swiss Declaration on the 1970 Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (**Hague Evidence Convention**); and
 - the Federal Act on Private International Law (**PILA**).
- The amendment to the Hague Evidence Convention replaces the requirement for **prior authorization** to question individuals in Switzerland via electronic means with a simpler **notification** requirement.
- The amendment to the PILA allows a Swiss-based **party** to foreign litigation to **directly** produce documents **voluntarily** in those proceedings, provided it does so in compliance with other restrictions under Swiss law, such as secrecy provisions or data protection provisions.



Circumstances where the Swiss Blocking Statute May Apply:

Service of documents originating in another state:

Must be served through judicial assistance unless the document in question has no legal effect.

Collection of documents from a Swiss-based person for foreign proceedings:

If the Swiss-based person is not a party to the foreign proceedings, disclosure must take place via international judicial assistance.

If the Swiss-based person is a party to the foreign proceedings, then they may directly produce documents voluntarily in those proceedings, in compliance with other Swiss laws (effective 1 January 2026).

Circumstances where the Swiss Blocking Statute May Apply:

Examining a witness based in Switzerland via electronic means:

If the witness is not a party to the foreign proceedings, the Swiss authorities must be notified at least 14 days before the hearing, the testimony must be voluntary, used exclusively for the purposes of the foreign proceedings and the Swiss cantonal authority must be afforded an opportunity to attend (effective 1 January 2026).

If the witness is a party to the foreign proceedings, they may provide such evidence on a voluntary basis.

Encouraging illegal acts in favour of a foreign state:

Art 271 has an
aiding and
abetting clause.

Mechanisms for Procuring Evidence that Won't Breach the Swiss Blocking Statute:

1

Seek **mutual assistance** directly from the Swiss authorities.

2

Seek **authoritative approval** from the Swiss authorities to carry out the act.

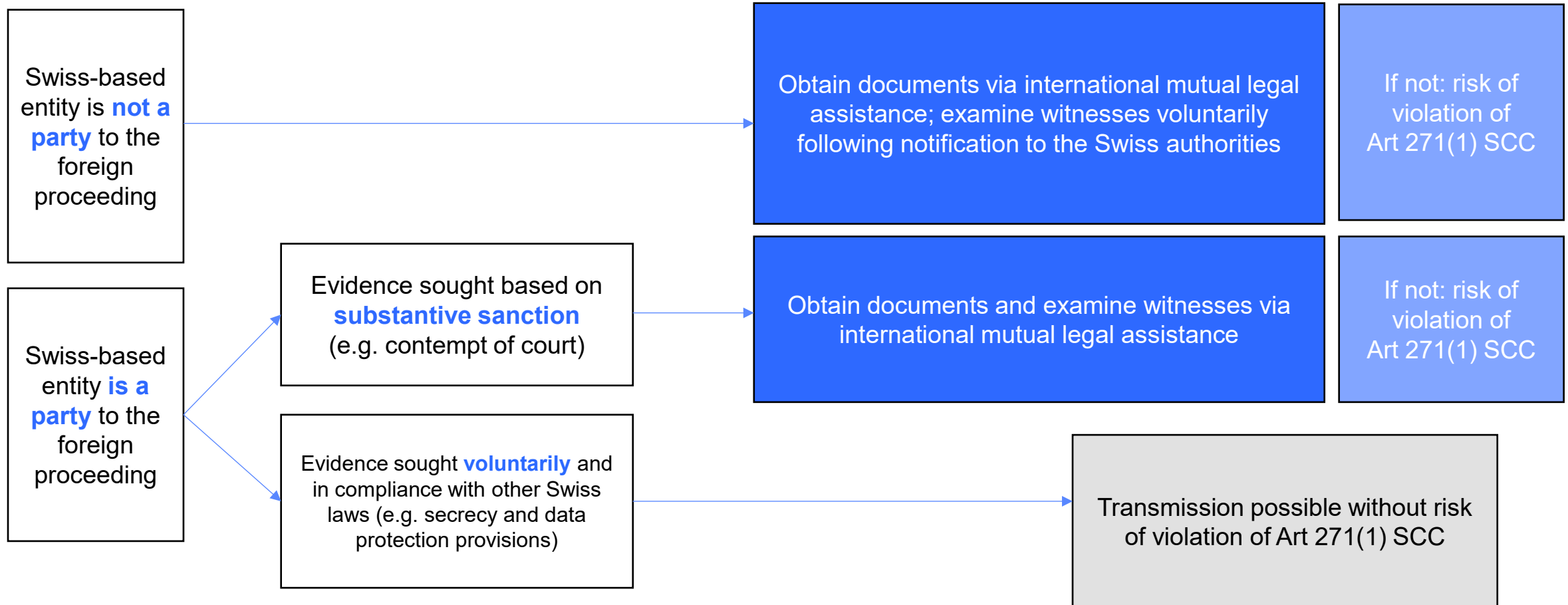
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Seek copies of the **information elsewhere**.

4

In the event you want to collect documents from, or question, a Swiss-based person who **is** a party to the relevant foreign proceedings, ensure the provision of evidence is **voluntary**.

Procuring Evidence from Switzerland

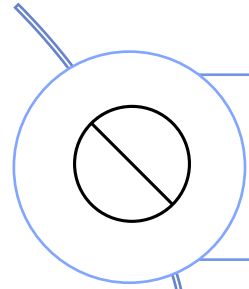


China

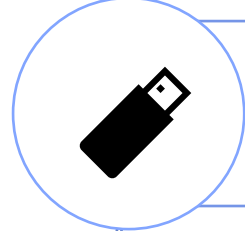
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Today's Agenda – Key Issues Affecting China Investigation



Blocking Statute in China



Data Security and Data Privacy Law



State Secrets Law

China's Blocking Statute – Overview

The International Criminal Judicial Assistance Law (the “ICJA Law”), which became effective on October 26, 2018, governs mutual assistance between China and foreign countries in criminal cases.

- The ICJA Law stipulates that no individual or entity within Chinese territory is allowed to provide foreign countries with **evidence, materials, or assistance** in connection with “criminal proceedings” without the consent of the Chinese government.
- **Approval from the government** is required before any person or entity in China can comply with a foreign subpoena in relation to a criminal matter.
- The ICJA Law’s implementing regulations were published on **May 11, 2024**. It remains ambiguous on penalties for violations.

China's Data Laws – Overview

Data Security Law (DSL)

Scope: Governs data processing and management activities **inside and outside China** if they affect national security, public interest, or the rights of citizens.

Cross-border restrictions:

Prohibits providing data stored in China to **foreign judicial or enforcement bodies** without prior approval from Chinese authorities.

Disclosure channels: Must go through **“competent authorities”** (e.g., mutual legal assistance treaties, sectoral regulators, or other official cooperation mechanisms).

Personal Information Protection Law (PIPL)

Effective date: November 1, 2021.

China's **first comprehensive data protection law**, forming part of the “three pillars” alongside the Cybersecurity Law (CSL) and DSL.

Consent Exemptions:

Performing a **contractual obligation** or **statutory duty**, protecting **public interest**, or responding to an **emergency involving life or property**.

No exemption for internal investigations.

China's Data Laws – Overview

- The [Measures for Security Assessment of Cross-border Data Transfer](#) (effective September 1, 2022) specify when a personal information processor must apply for an official data security assessment.
- The [Implementing Regulation on Personal Information Protection Certification](#) (November 2022) sets out the standards and procedures for issuing a personal information protection certificate.
- The [Provisions on the Promotion and Regulation of Cross-Border Data Flows](#), which took effect on March 22, 2024, exempt certain types of data transfers from the filing obligations required under the regulations.

Key Takeaways

- China's personal data protection laws are rapidly evolving at both national and local levels.
- Multinationals doing business in China must **comply with cross-border data transfer requirements** before transferring any personal information outside of China, and should **review corporate policies** for compliance with the latest legal developments.

China State Secrets Law – Overview

Companies should carefully consider China's State Secrets Law in cross-border regulatory and litigation matters.

Scope of State Secret

State secrets are matters that have a vital bearing on state security and national interests.

Key Revisions (Effective May 1, 2024) ("2024 Revisions"):

The scope of "state secrets" is expanded to cover "secrets in work."

The revision strengthens controls on data security, cross-border transfer, and digital information management.

Prohibitions and Penalties

In general, the law prohibits any unauthorized possession, use or transmission of state secrets. Information systems and equipment that store or handle state secrets must be protected by security measures.

Practical Considerations in China

- The ICJA Law and Data Security Law give the Chinese government broad discretion to refuse or block foreign governments' requests for assistance.
- The ICJA Law and Data Security Law may create **competing legal obligations** for MNCs with ties to China and other jurisdictions.
- In government investigations involving the PRC, **identify as quickly as possible whether any data exists in the PRC** that may be subject to a government request.
- **Engage knowledgeable PRC counsel** to assist before transferring PRC data or documents to U.S. authorities, even where transmission has been cleared from a State secrets perspective.
- Build **document review and data transfer protocols** to minimize the risk of inadvertent possession or transmission of state secrets.

Conclusion

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Upcoming
February
Programs

2025/2026
White Collar
Webcast
Series

Date and Time	Program	Registration Link
Tuesday, February 3, 2026 9:00 AM – 10:30 AM PT 12:00 PM – 1:30 PM ET	U.S. Criminal Law and Corporate Enforcement Developments in 2025 Moderator: Stephanie Brooker Presenters: Dani James, John W.F. Chesley, Melissa Farrar, Michael Diamant, Stuart Delery	Event Details
Wednesday, February 4, 2026 9:00 AM – 11:00 AM PT 12:00 PM – 2:00 PM ET	BSA/AML and Sanctions and Export Controls Moderator: F. Joseph Warin Presenters: Stephanie Brooker, Adam Smith, Matt Axelrod, David Burns, Kendall Day, Ella Alves Capone, Sam Raymond	Event Details
Thursday, February 5, 2026 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	Managing Third-Party Risk in a Shifting Regulatory Landscape Presenters: Oleh Vretsona, Michele Wiener (Control Risks), Ulla Pentinpuro (Control Risks), Victor Tong	Event Details



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