

Internal Investigations in the Middle East and Africa: A Practical Guide to Key Decisions

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I. Introduction

An internal investigation is rarely a straightforward exercise. From the moment an ethics and compliance concern is raised, legal and compliance teams are required to make judgment calls with incomplete information on a range of issues – often under immense time pressure – against the backdrop of employee sensitivities, regulatory expectations, and operational disruption. While many of these issues may appear familiar and straightforward at first blush, how they are handled in practice can have a ripple effect on a number of important factors in the overall effectiveness of an internal investigation, including employee cooperation, the organization’s ability to adequately remediate, and ultimately, the organization’s exposure to litigation and enforcement risk.

For in-house counsel operating in the Middle East and Africa, these issues are layered onto distinctive legal, cultural, and institutional landscapes, including a regional patchwork of civil law systems, common-law free zones, and rapidly evolving regulatory regimes each with their own approach to privilege (or lack thereof), data protection, and disclosure obligations. In short, decisions that may be routine in New York, London, or Paris can carry materially different consequences in Dubai, Lagos, or Johannesburg.

In this series of articles, we will walk through the key issues and decision points that arise over the course of an internal investigation. Privilege, preservation of data, witness handling, and scoping decisions all have the potential either to streamline an already resource-intensive process or to complicate it significantly. Experience also teaches us that in investigations in the Middle East and Africa, early missteps in investigations tend to be less forgiving.

This initial piece provides a high-level overview of the investigation lifecycle and highlights some of the key issues that commonly arise at each stage. Future installments in this series will explore certain of these issues in greater depth.

II. Key Preliminary Questions and Decision Points

At the outset of an investigation, there are a series of key questions that ought to be considered, which will shape how the investigation will unfold:

1. *How serious are the allegations and what level of response is proportionate?*

A sound initial triage process should assess the nature and credibility of the allegations, including their specificity, the seriousness of the alleged conduct, the seniority of the individuals involved, as well as the potential for legal, regulatory, or reputational exposure. For

example, additional weight is often given to allegations involving senior personnel at the company or allegations that if true, could give rise to material legal exposure for the company (e.g., bribery or price-fixing allegations) or significant financial or commercial risks (e.g., auditors refusing to sign off on financials, or commercial partners terminating a contract). By contrast, many ethics hotlines are flooded with complaints that may be dressed up as ethics and compliance concerns but are in reality disputes that are better handled in the context of HR processes. Consideration should also be given to whether the alleged issues are isolated or systemic, especially where a single agent or distributor may service operations across several jurisdictions, as is common in regional commercial structures.

2. Are there mandatory or early reporting obligations?

In parallel with triage, in-house counsel should assess whether any regulator or supervisory body imposes a reporting obligation that may be triggered by the allegation, or facts that arise in the course of the investigation as fact development progresses. Regional authorities may require prompt notification once a reportable matter comes to an organization's attention. Identifying these requirements early on avoids the risk that a reporting deadline passes while the organization is still assessing whether and how to investigate. Awareness of these requirements can also shape the fact-finding process.

3. How should triage decisions be documented?

When a report is handled through an HR process or by line management rather than through a formal investigation, contemporaneous documentation of the rationale behind that decision can become important down the line. That record may later be scrutinized by regional regulators, overseas enforcement authorities, auditors, and other stakeholders. A clear and contemporaneous record explaining the basis for the chosen course can mitigate later second-guessing and support the kind of good faith account that can carry weight in cooperation credit assessments.

4. Where might issues arise, beyond speak-up reports?

Not all investigations start with an employee complaint or hotline report. Especially in the Middle East, where residency visas are often tied to employment under sponsorship arrangements, employees may be reluctant to engage with internal channels for fear of retaliation. As such, it is important for organizations to be flexible in their intake process, allowing the possibility that matters that warrant investigation can arise from an array of sources other than a hotline. Audit findings, compliance monitoring, exit interviews, transactional due diligence on local partners, and commercial and operational anomalies all carry potential to surface issues that may warrant an investigation.

5. Should the investigation be conducted under privilege?

The decision of whether an investigation can and should be conducted under privilege should be made deliberately and at the outset, as this will shape both investigative process and downstream risk (e.g., could the investigation findings and communications relating to the investigation be subject to compulsory disclosure in litigation or a government investigation). The core question is typically whether the investigation is being conducted for the purpose of

providing legal advice, or in contemplation of litigation. Key considerations include the realistic prospect of litigation or enforcement if the allegation is true, whether findings from the investigation may need to be shared with regulators, auditors, or other external stakeholders, and how privilege will be assessed across relevant jurisdictions (not only the locus of the conduct, but also the jurisdiction(s) where a company may be subject to investigation and litigation). In cross-border matters, assumptions drawn from common law systems can be particularly risky.

For example, in the Middle East, onshore civil law jurisdictions including the UAE and Saudi Arabia do not recognize legal professional privilege in the same way that common law systems do, and protections for in-house counsel communications may therefore be limited. By contrast, offshore common law jurisdictions like the Dubai International Financial Centre (“DIFC”) and the Abu Dhabi Global Market (“ADGM”) apply privilege concepts familiar to UK and U.S. practitioners. These differences can materially affect how investigations are structured, how documents are created and shared, and what ultimately may be subject to disclosure.

Where privilege is limited or not recognized in the jurisdiction where the work is being done, that fact *may* weigh against running the investigation under privilege. However, the relevant inquiry is not confined to where the conduct subject to investigation occurred; if the underlying legal or enforcement risk sits in another jurisdiction, such as the U.S. or EU, privilege should also be assessed under the rules of the relevant jurisdiction(s), since they are likely to govern future production or discovery disputes.

Failing to assert privilege early in an investigation, particularly in matters with enforcement or litigation exposure, can expose sensitive communications and strategic assessments to disclosure to third parties. On the other hand, the overly aggressive application of privilege over routine fact-finding inquiries can slow down the investigation, constrain the flow of information to business stakeholders who may need to act on findings, and impose a more formal investigative posture than the matter warrants. Navigating this tension, especially where investigative work product may later be scrutinized outside the organization, is one of the most persistent and consequential judgment calls in an internal investigation.

6. What data should be preserved?

Data preservation in investigations implicates an increasingly complex data protection landscape. Regional data protection regimes impose differing constraints on processing and, critically, on cross-border transfer of personal data. WhatsApp and other off-channel messaging platforms are often deeply embedded in regional business communication practices and should be addressed expressly in preservation planning rather than treated as an afterthought. Proportionality and jurisdictional awareness remain key as overly broad holds can become costly and disruptive, while delays and incomplete preservation efforts risk spoliation concerns that could carry adverse consequences.

7. Who should conduct the investigation?

Deciding who should lead the investigation is a threshold decision influencing not only procedural practicalities but also the credibility of the process as a whole. Factors to consider

include the seniority or function of the individuals whose conduct is under scrutiny, the sensitivity of the subject matter, and whether specialized expertise is needed (for example, forensic accounting expertise). Where privilege protection is critical, where the matter may be reviewed by U.S., UK, or EU authorities, or where independence will be tested by a regional regulator, external counsel admitted to practice in the relevant jurisdiction(s) is often essential. Capability ought to be balanced with confidence in how the investigation will be perceived both internally and potentially by third parties, as cultural competence and local know-how is often critical.

8. *How should we plan the investigation?*

Careful planning at the outset can curtail the possible resources expended in the course of the investigation. Developing an investigation workplan, which is very much a “living document,” is best practice. The investigation workplan should clearly define the objectives, the anticipated sources of evidence, and initial sequencing of data collection and interviews (where to interview, collect, and host data), all of which will help to determine the initial scope and timeframe. While the information uncovered during the course of the investigation may alter these parameters, having the initial plan in place allows for greater coordination and transparency with various internal teams while keeping an eye to a proportionate and defensible approach.

III. Evidence and Interviews

With an investigation already underway, the scope and methodology used for data collection and assessment will affect the pace and findings. The following judgment calls deserve particular attention.

1. *Managing confidentiality and source protection*

Confidential sources should be protected (to the extent possible) at the outset by limiting identifying details while realistically managing reporters’ expectations about confidentiality. Absolute anonymity cannot always be guaranteed, especially if specific allegations are raised that can only come from a handful of knowledgeable parties, and in economies composed of tightly knit expatriate communities, withholding names may not do much to ensure anonymity. That being said, the importance of confidentiality cannot be overstated in jurisdictions where employees are on sponsored visas and the perceived risk of retaliation extends beyond loss of employment to loss of residency and the right to remain in the country, or even personal security risks.

2. *Structuring interviews in cross-border and culturally complex settings*

How interviews are planned and conducted involves a series of judgment calls, particularly in cross-border investigations where cultural and structural factors shape how witnesses engage. Hierarchical norms in regional organizations may discourage junior employees from contradicting senior colleagues, and witness candor may improve when interviews are conducted by people familiar with the region and local customs. Choices about interview sequencing and framing should prioritize fact-finding over confrontation to avoid an unnecessarily adversarial posture. Clear communications at the outset around purpose,

process, and protections can reduce employee anxiety and encourage cooperation. For example, *Upjohn* and similar warnings may need to be explained carefully to avoid being perceived as threatening. Local data protection rules may also impose procedural requirements that need to be built into interview planning.

At the same time, the investigation team should remain sensitive to cultural and personal factors specific to individual witnesses. Especially in high-risk jurisdictions where investigations may entail political sensitivities, employees on the ground may have legitimate worries about their physical safety. Addressing their concerns and keeping an open line of communication can go a long way to maintaining employee trust and ensuring procedural integrity.

3. Defining the scope of document review

Document review often becomes the most resource-intensive phase of an investigation, making early scoping decisions critical. Defining document categories, relevant custodians, and realistic date ranges at the outset can materially limit volume and cost. E-discovery tools, including AI solutions, can support early case assessment by identifying likely custodians and data volumes, while analytics and continuous active-learning workflows can significantly reduce the burden of manual review and facilitate real time synthesis of complex facts. Where such technologies are used, their application should be documented in a manner capable of withstanding later regulatory or judicial scrutiny. As the investigation progresses, scope should be reassessed to ensure efficiency does not come at the expense of defensibility.

4. When to engage forensic accounting experts and other specialists

Certain investigations can benefit from early involvement of forensic accounting experts or other specialists, particularly where allegations involve financial misconduct, third-party payments, or complex transactions. These experts can help identify red flags, trace funds, and test explanations offered by witnesses, potentially revealing patterns not apparent from interviews alone. Digital forensic and e-discovery specialists can help trace and preserve information across devices that might not otherwise be readily available. The decision to engage specialists should consider proportionality, privilege strategy, and whether their work may later be scrutinized by regulators or auditors.

IV. Findings and Remediation

Despite best efforts, investigations do not always yield complete clarity. Witness accounts may conflict, and information may still be incomplete or inconclusive, but how an organization responds amidst the uncertainty matters more than reaching conclusions beyond a reasonable doubt.

1. Making decisions with an imperfect evidentiary record

Rather than waiting for certainty, in-house teams must not let the perfect be the enemy of the good. They frequently must make risk-based determinations on less than a full record, focusing on reducing the likelihood of recurrence, addressing control weaknesses, and

mitigating regulatory or reputational exposure. This approach often aligns with how regulators assess corporate culture and responsiveness when evaluating outcomes.

2. Acting early to mitigate risk

Remediation need not wait for a final report. Suspending risky practices, issuing targeted guidance or training, or temporarily reassigning responsibilities may be appropriate interim steps where concerns are credible, and bearing in mind local labor and commercial laws. These actions can demonstrate that an organization has taken a careful and thoughtful approach while preserving flexibility as facts continue to develop.

3. Protecting reporters and sharing lessons learned

Whistleblower protections can vary across jurisdictions, and organizations face a delicate balance between learning from investigations and creating new risks. Lessons may be shared through anonymized training or policy updates, while protections for reporters may include ongoing monitoring for retaliation or periodic check-ins. Both aspects are essential to maintaining confidence in speak-up mechanisms.

4. Deciding whether and how to disclose

Disclosure to regulators, external auditors, and other stakeholders and third parties requires careful consideration of a host of factors, including the severity and pervasiveness of the conduct, applicable laws, and prior representations. Timing and framing are crucial as premature disclosure may limit flexibility, while delay may erode credibility. In higher-risk matters, involving external counsel can help organizations assess disclosure obligations across jurisdictions, manage regulatory engagement, and preserve privilege, while also providing an independent assessment in judgments that may later be scrutinized by enforcement authorities or other third parties.

In some jurisdictions, the question is not whether to disclose but how and when. Some regional regulators require submission of investigation reports as a matter of course for entities within their remit. Such requirements can shape investigation strategy and documentation choices from the outset including decisions on privilege and written work product.

V. Conclusion

Internal investigations are shaped as much by judgment as by process. They are part of a continuous governance ecosystem that tests an organization's ability to respond to risk with credibility and care. For in-house lawyers, success lies less in perfect process and more in thoughtful and risk-based decision making at each stage, balancing legal exposure, employee trust, operational realities, and long-term integrity. These decisions can help keep an investigation focused and proportionate. Handled poorly, these decisions can add to complexity, cost, and reputational risk and exposure. Viewing the investigative process through the lens of these trade-offs rather than a purely linear exercise can help in-house teams navigate both legal risk and practical realities more effectively.

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