

MAYER | BROWN

Asia Investigations Practice



Introduction

Enforcement by regulatory bodies is on the increase across the globe and many regulators have been armed with new and enhanced statutory powers of investigation. Also regulators increasingly have at their disposal more severe sanctions, with punitive fines and criminalisation of certain corporate activities, and an environment in which there is a greater appetite for punishing perceived corporate misdeeds.

The Asia region is no exception and in recent years we have seen the emergence of new regulatory bodies across many jurisdictions in Asia and the empowerment of others, resulting in more investigations and more aggressive enforcement. Asia-based companies are also increasingly impacted by the extra-territorial reach of international legislation such as the US FCPA and the UK Bribery Act.

In this increasingly difficult environment, companies regularly have a need to carry out internal investigations to respond to allegations of misconduct by increasingly aggressive regulatory authorities. A company may also come to know of allegations of misconduct through a variety of other means and before any formal regulatory investigation is underway; for example, complaints may be made by disgruntled employees on an anonymous basis or at exit interviews, and allegations of misconduct may be raised by an external third party such as a customer or vendor.

A company cannot properly respond to an allegation if it does not have all the facts, and it is beneficial to involve external lawyers in these fact finding exercises in order to identify the risk areas and advise on steps that might be taken to mitigate risk, as well as to advise on how best to respond to the regulatory investigations once they have commenced. Maximising the availability of legal privilege and ensuring compliance with the increasingly complex issues associated with data privacy, state secrets and local employment laws, as well as other requirements, are all key concerns when conducting an investigation or responding to a regulator's requests.

Key Areas of Practice

1. Anti-Corruption Practice

Combating corruption is now one of the highest priorities of enforcement agencies in Greater Asia and we advise on the multiple, complex features of the FCPA and the UK Bribery Act, from an Asian perspective, and their interplay with domestic anti-bribery legislation in the region.

We have a solid global anti-corruption platform in Asia, consists of a former Detective Inspector in the Commercial Crime Bureau of the Hong Kong Police, with significant presence in China, as well as in Hong Kong, Thailand, Singapore and Vietnam. The global platform is structured so that our team, based in our regional offices, can be deployed to support, manage and coordinate onsite domestic investigations with the input and assistance of foreign lawyers on any extra-territorial application of international law.

We have extensive experience in handling internal corporate investigations, including investigations regarding possible violations of the books-and-records, internal controls, and anti-bribery provisions of the FCPA and anti-corruption legislation.

In Hong Kong, we have had many opportunities to work with clients in responding to investigations launched by the Independent Commission Against Corruption (ICAC), in dealing with dawn raids, and in the execution of search warrants and the interviewing of employees.

2. Antitrust Practices

We advise on a broad range of anti-competitive conduct laws and regulations throughout the Asia Pacific region, including in particular China and Hong Kong. We have undertaken whole-of business reviews, assessing competition law compliance for leading companies in the finance, construction, utilities and transport industries and providing on going competition law advice to them. This has involved assisting clients in rolling out compliance programmes, including by developing compliance manuals and 'train the

trainer' programmes to promote competition compliance within their organisations.

In China, behavioural counselling and investigation response is becoming ever more important as Anti-Monopoly Law (AML) enforcement activity by the National Development and Reform Commission (NDRC) and State Administration for Industry and Commerce (SAIC) ramps up. We provide strategic advice and compliance assistance to key clients on China's antitrust laws – including the Anti-Unfair Competition Law, the Pricing Law and the relevant conduct prohibitions under the AML – and we regularly liaise with the competition officials in the NDRC and SAIC responsible for administering the AML behavioural laws. We also assist businesses in developing legal compliance programmes tailored for China's unique antitrust and competition regime.

Our lawyers have substantial experience in advising clients on the conduct rules in other jurisdictions such as Hong Kong and Australia and coordinating antitrust behavioural work and investigation response in key regional jurisdictions such as Australia, Taiwan, Korea and Japan. We assist major corporations to develop and implement competition law compliance programmes tailored to the developing regime, and have worked with some of Hong Kong's key banking and utility enterprises, trade associations and statutory bodies to provide antitrust advice and assistance.

3. Financial Services Regulatory & Enforcement Practice

Those of our clients who operate in more than one country or who offer their products and services across borders face an often conflicting web of foreign and domestic legal and regulatory requirements. At the same time, financial services supervisory bodies in Asia, like those in all other regions, closely scrutinise institutions that operate in multiple jurisdictions and increasingly pursue coordinated investigatory and enforcement actions against them. These sources of potential exposure will only increase as the trend toward integration of financial transactions and markets continues.

Our lawyers in Asia work with leading global financial institutions by conducting internal investigations and developing strategies to mitigate the regulatory exposure and resulting risks to their public reputation.

We are experienced in the field of regulatory investigations and proceedings including those conducted by the Hong Kong Securities and Futures Commission, the Hong Kong Monetary Authority and other regulatory authorities in Asia. We coordinate actions across a wide range of local and international enforcement agencies that often conduct joint (or separate but parallel) enforcement investigations and actions.

Our team includes lawyers with experience gained while working at the financial regulatory bodies, allowing insight into matters from the other side of the table. Our global resources allow us to provide our clients with informed and insightful proposals that are designed to avoid or minimise legal exposure.

4. Other Types of Investigation

Our team of lawyers also has experience in assisting clients with investigations in other areas, including working on anti-unfair competition investigations and customs investigations in China, employment-related investigations across the region, and investigations concerning immigration matters, passing off and other IP-related issues.

STRATEGIC APPROACH

Mayer Brown lawyers have the experience and the resources to identify and adopt a strategic approach to advising you on your internal investigations. We have worked with inside counsel, internal auditors and external auditors to assemble and review documents, interview directors and current and former employees, and advise boards of directors and audit committees on the results of investigations.

We are alert to issues of lawyer-client (and like) privilege, document retention, and electronic discovery, all of which may be crucial in the event of any government enforcement proceeding.

We are familiar with the complexities of multinational investigations and have considerable experience in coordinating the work of foreign counsel in tax investigations, customised investigations, and in navigating conflicting data protection and financial privacy laws and expectations to ensure that no sovereign is offended and that clients can comply with home-country laws.

OUR GLOBAL NETWORK

As businesses expand and globalise, Mayer Brown understands that clients often require legal advice and assistance in more than one country. With an extensive global network in Asia, the Americas, Europe and Middle East, we are able to assemble and manage legal teams across many jurisdictions. We assist clients worldwide, giving them the advantage of a local firm combined with the extensive global legal experience needed to assist on complex, cross-border investigations. We collaborate seamlessly across offices to identify relevant issues and deliver the full strength of our global network to our clients.

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Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our "one-firm" culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

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