



Trick of the Trade: FCPA Investigations

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Over the past decade, U.S. government enforcement agencies have substantially increased the number of investigations --- and resulting enforcement actions --- of companies and individuals in Latin America for alleged violations of the Foreign Corrupt Practices Act (“FCPA”). For U.S. multinational companies operating in Latin America, these investigations compound the challenges already inherent in conducting operations in multiple countries with multiple languages. For example, in 2010, the Department of Justice (“DOJ”) disclosed the existence of 32 FCPA and related enforcement actions, approximately one-third of which (11 of 32) had a Latin American component, with affected countries including but not limited to Honduras, Nicaragua, Brazil, and Mexico.

If involved with an FCPA investigation in Latin America, one trick of the trade is to choose the right e-document vendor so as to limit the volume of irrelevant documents that are reviewed. This is an obvious point, but the issue is how to accomplish it. To effectively exclude non-relevant documents, experience has shown that it is important for the investigating law firm (or company) to engage a dedicated e-document review company. That company must have sophisticated document filtering and review technologies appropriate to the language involved, and must also be capable of reviewing the collected documents through its filtering software. The filtering technology can review the collected documents through its filtering software to exclude non-relevant documents. Such filtering technology can significantly reduce the number of documents subject to potential review. Moreover, the document review company should ideally also assist the law firm (or company) conducting the review by using technology to conduct an electronic pre-attorney review of the documents to cull and identify categories of relevant documents.

Both the filtering and the pre-attorney review of documents can significantly reduce the costs associated with the investigation. This is so because the volume of documents to be reviewed by attorneys in anticipation of potential interviews will be reduced from the initial volume of documents collected from affected employees. Thus, prior experience with selecting the right e-document vendor and document filtering programs will avoid costly mistakes.

Of particular concern when using dedicated document review companies and technologies, however, is whether the companies or technologies have the ability to review and analyze

documents in foreign languages. Specifically, when conducting an investigation in Latin America the document review company should have appropriate technology to recognize, review, and collate Spanish or Portuguese language characters. A failure to appropriately identify and search documents with the specialized Spanish or Portuguese language characters can lead to an ineffective and incomplete review of the documents and it could also result in a waste of money by the company. Thus, it is imperative that the law firm conducting an investigation in Latin America selects a document review company with sophisticated and thorough software and technology with the ability to recognize and review Spanish or Portuguese language characters. These same principles apply in other areas of the world as well with other languages.

By selecting dedicated document review companies and technologies, a company conducting a FCPA investigation in Latin America can decrease the ultimate cost of a document collection and review, by narrowing and focusing the ultimate number of documents to be reviewed by the attorneys conducting the investigation.

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