
Internal Investigations – A Global Case Study

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Agenda

- Overview
 - Issues in a Global Internal Investigations
 - What we learned in 2020
- Hypothetical to Analyze
 - Attorney-Client Privilege
 - Data Privacy/Document Collection
 - Conducting Witness/Employee interviews
 - Dawn raid issues
 - Self Disclosure – Mandatory or Optional

What we learned

- Resiliency
- Problems still occur
- Adapt



Hypothetical- Background

- Cosmo Kramer is the CEO and Chief Compliance Officer at Kramera Industries, a publicly traded multinational furniture and perfume company based in New York and Idaho. Kramera distributes its products through its own company-owned stores as well as third party distributors worldwide.
- Following Kramer's passion for coffee table design, Kramera recently acquired KoffeeTables ASA, a publicly listed Swedish furniture maker company that sells its products through company sales representatives and third-party sales agents throughout Eastern Europe and South America.
- KoffeeTables adopted Kramera's compliance policies and procedures, using Kramera's ethics helpline.



CEO and CCO Kramera Industries

HYPOTHETICAL – COMPLIANT RE: IMPROPER PAYMENTS



- Last week, Cosmo received an anonymous ethics complaint via voicemail from a Kramera employee based in Poland, raising concerns about the sales practices of Kramera's sales manager in Warsaw.
- The anonymous employee alleged that Newman, Kramera's government sales manager, had contracted a third-party logistics company, ShadyMovers, to indirectly pay bribes to government officials in Poland.
- The anonymous employee alleged that she had copies of ShadyMovers shipping invoices for products that were never shipped and that Kramera's general manager in Poland, Elaine Benes, authorized the payments.

HYPOTHETICAL – COMPLIANT RE: IMPROPER PAYMENTS

Kramer decides that an investigation is required and hires a law firm to develop an investigation plan.

The law firm must consider:

- Who will conduct the investigation?
- Application of attorney-client privilege:
- What privilege law is applicable?



Polling question one

Who will conduct the investigation?

- A. Internal audit
- B. In-house counsel
- C. Outside counsel

Polling question two

What privilege law applies?

- A. New York
- B. Law of Poland
- C. Law of Sweden
- D. Law of lawyer handling investigation
- E. Need more information



HYPOTHETICAL – COMPLIANT RE: IMPROPER PAYMENTS

Kramer informs the law firm that KramERICA maintains electronic documents on a central server in Iceland. Kramer asks the law firm to consider:

- Collection and review of electronic documents on KramERICA central server in Iceland and local documents in Warsaw.
- Challenges posed by WeChat, WhatsApp, and similar electronic messaging systems that are not controlled by KramERICA.

Interviews

Interviews

Who?

How?

Where?



Tip of the iceberg





Hypothetical- Ethics Complaint

Yesterday, Kramer received an anonymous email ethics complaint from a KoffeeTable employee based in Bolivia, raising concerns about the sales practices of KoffeeTable's third-party sales agents in Brazil.

The anonymous employee alleged that George Costanza, a third-party sales agent, was giving Kramerica's very expensive perfumes, rare stamps and furniture to government purchasing agents to win Brazilian government bids for coffee tables (more business for KoffeeTables).

Finally, the anonymous employee threatened to go to Bolivia's and Brazil's anti-corruption authorities if Kramerica did not investigate George.

HYPOTHETICAL – BRIBERY COMPLAINT IN BOLIVIA AND BRAZIL

Kramer asks the law firm to expand the investigation to Bolivia and Brazil. The law firm then considers:

- The collection and review of documents located in Bolivia and Brazil, including the differences from the data privacy laws in the European Union.
- Whether documents can (and should) be transferred outside of those countries for the document review?
- Whether the interviews should be conducted by foreign counsel or local counsel?
- Whether Kramerica should consider self-disclosure in light of the potential whistleblower?
 - If so, to whom should Kramerica disclose?

Polling question three

Should Kramerica make a disclosure now?

- A. yes
- B. no
- C. It depends

Polling question four

Who should KramERICA disclose to?

- A. DOJ/SEC
- B. Polish Department of Justice
- C. Swedish Department of Justice
- D. Brazilian Department of Justice
- E. Bolivian Department of Justice
- F. It depends

HYPOTHETICAL – BRIBERY COMPLAINT IN BOLIVIA AND BRAZIL

While the law firm is implementing a document hold and collecting electronic documents, Kramerica receives notification that Brazilian anti-corruption authorities have arrived in Kramerica's Sao Paulo, Brazil offices to conduct a dawn-raid based on a whistleblower's allegations.



Polling question five

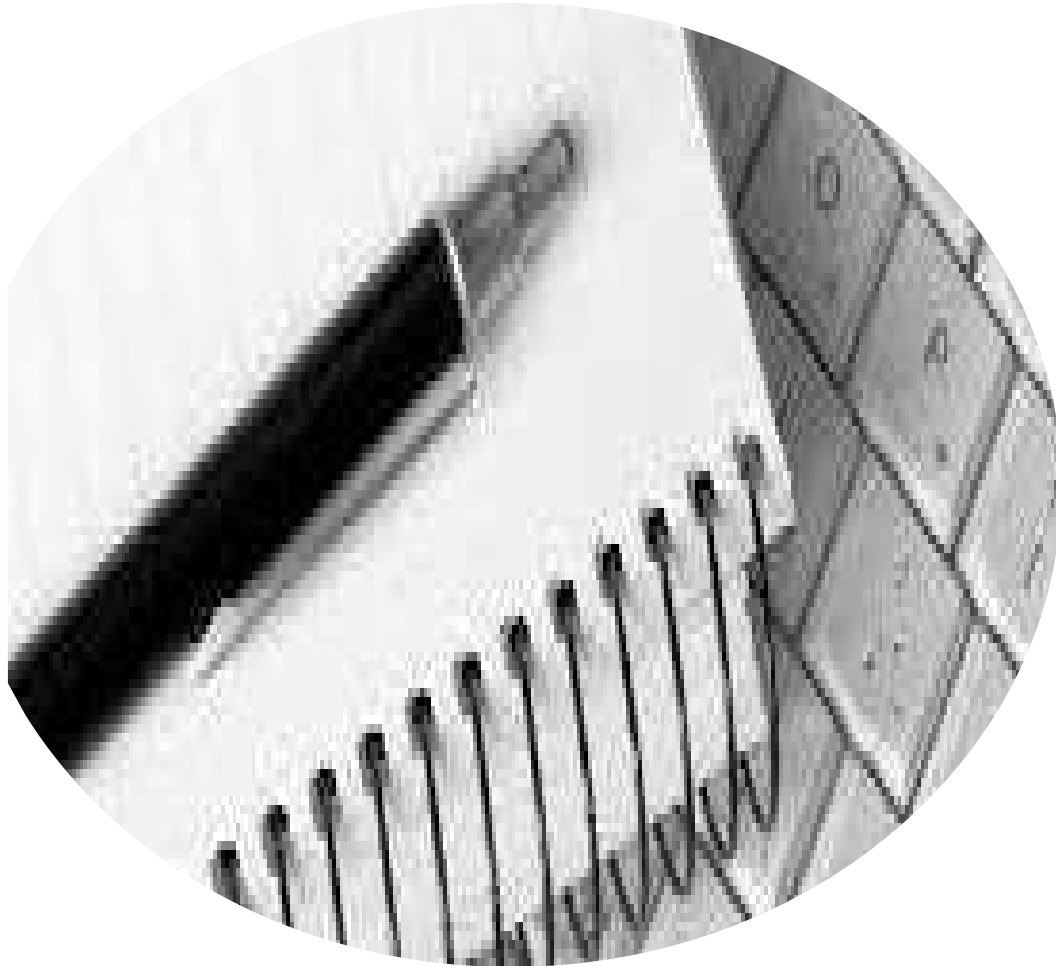
What should the law firm do in response to the dawn raid?

- A. Disclose to the DOJ
- B. Disclose to the Brazilian authorities
- C. Disclose to the Bolivian authorities
- D. Cry

Polling question six

Does the dawn raid require mandatory reporting/
disclosure?

- A. Yes
- B. No
- C. It depends



Report Writing

- Keep it factual
- Keep it direct and succinct
- Don't recommend punishment
- Identify root-cause



Closing the loop

Best practices for reporting back to the whistleblower

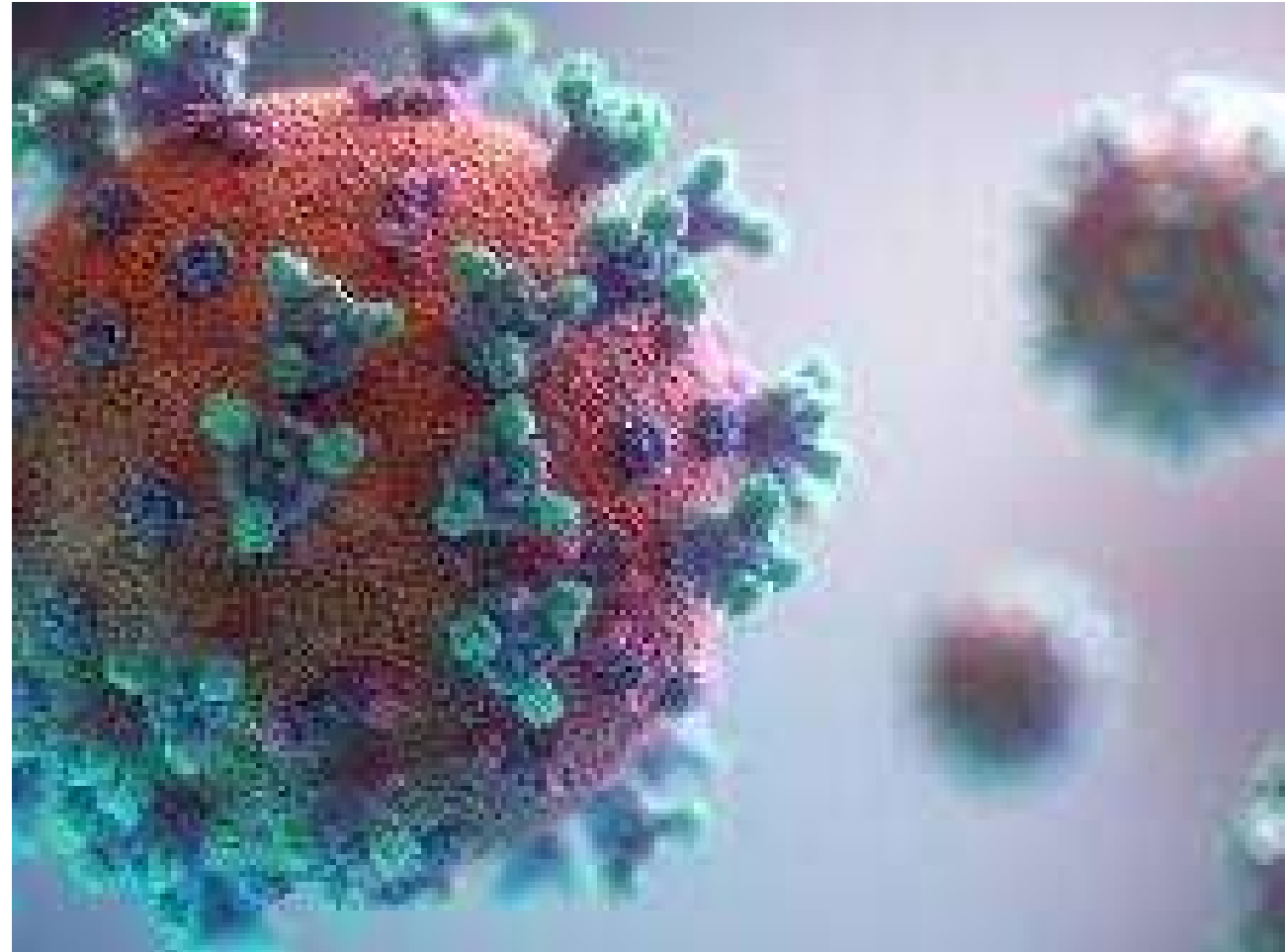
Why is it important?

Covid takeaways

Data collection issues when not working in the office

Interview concerns when interviewee is remote

Maintaining confidentiality when working remote



Questions





Disclosure

The information provided here is of a general nature and is not intended to address the specific circumstances of any individual or entity. In specific circumstances, the services of a professional should be sought.

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