

Investigations — A New Era

Organisations in Asia are challenged by an expanding regulatory impost and a growing fragmentation of regulations encountered in cross-jurisdictional investigations. While businesses aim to conduct their operations with adherence to legal and ethical standards, the inevitability of requiring internal and external investigations persists. Involvement in an investigation carries legal, regulatory and reputational risks, which may result in potential regulatory penalties, substantial investments and long-lasting reputational damage.

The rise of big data and the sophistication of new and innovative technology, along with rapidly changing regulatory environments, mean the investigations of today are entering a new era.

The speed at which this evolution is taking place is staggering, with respondents saying that 49% of companies in Asia will renew their processes to adapt to changing data sources and data policy guidelines on a monthly basis. Of those surveyed, 29% said this was done on a quarterly basis, while only 1% of respondents said they do not renew processes, underscoring the rapid rate at which data is being collected and refreshed.

Technological advances such as artificial intelligence ("AI") and Technology Assisted Review ("TAR") have assisted in streamlining investigations and have helped remove some of the labour-intensive work, with the adoption of this form of technology commonplace across our respondents. 72% of firms say they are always using (33%) or regularly use (39%) generative AI to support with the investigation process.

The survey shows that investigations feature as a key component of the in-house counsel role in Asia, with 28% saying they have faced some form of investigation or regulatory scrutiny in the past 12 months. That number rises to 56% over the past two years, with firms saying they encounter an investigation around every 17 months. 59% of in-house counsel surveyed take the lead on managing internal investigations, with human resources (54%) and compliance (38%) also tasked with conducting such enquiries. Respondents noted that the most common causes for internal investigations are financial misconduct (51%), employee misconduct (49%), intellectual property loss/theft (46%), fraud and whistleblower allegations (both 39%).

“The main areas of investigation for us are corruption related to vendor kickbacks and conflicts of interest,” says one General Counsel in the real estate industry.

“Our areas of investigation may span across many topics including corruption, conflicts of interest and employee misconduct,” says another.

Adding to the challenge, the process of gathering evidence to unveil facts involves tapping into various data sources. These sources may encompass ephemeral messaging applications that automatically delete conversations after a short duration, as well as widely used platforms like WhatsApp and videoconferencing tools such as Microsoft Teams and Zoom. Extracting and preserving data from these channels often requires the involvement of specialists. A number of banks have taken measures to restrict the use of instant messaging and applications

in order to bolster internal controls by maintaining records of messages for monitoring and audit purposes.

An additional emerging concern for in-house counsel is the risk of data theft in the digital age. In this landscape, sensitive information can be illicitly harvested using personal mobile devices, posing a threat as the data can be easily removed from the organisation in digital form.

As firms prepare for and embrace this new era of investigations, a clearly defined and tested set of protocols is required. 90% of in-house counsel surveyed say that their companies are already moving towards policy frameworks for managing investigations, with 44% saying frameworks are already in place, and 46% saying they are in the process of implementing. This can also help mitigate the challenges posed by varied regulatory measures often encountered when an investigation spans multiple jurisdictions or geographies.

As technological advancements drive this new era of investigations, the in-house counsel of today can gain significant advantages by understanding and effectively using new technologies to streamline the investigation process.

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Investigations: Survey Findings

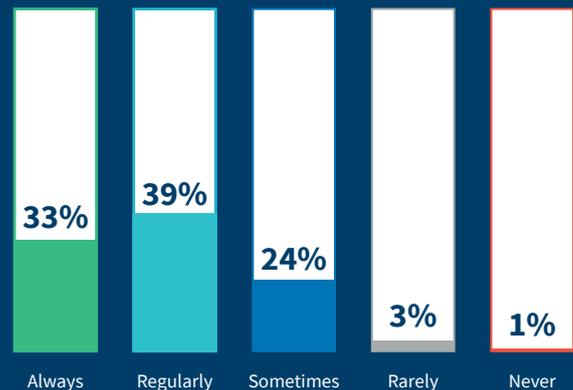
Who is responsible for managing internal investigations within your company?



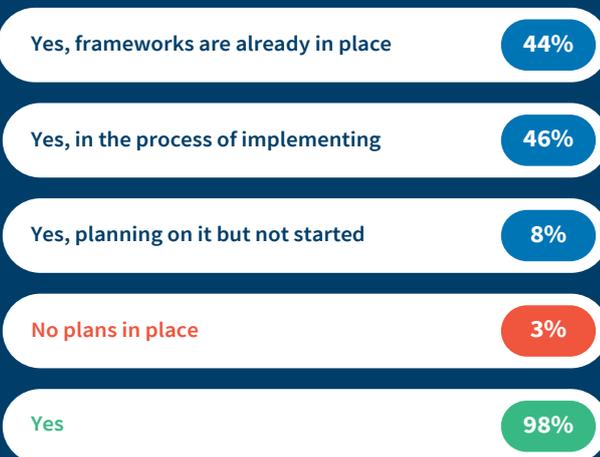
How often do you renew processes to adapt to changing data sources and data protection guidelines?



Is your team/company using generative AI or similar technology for investigations?



Is your company planning on moving towards policy frameworks for managing investigations?



What are the most common triggers for internal investigations in your organisation?

