

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
*Clare Fletcher at Slaughter and May*

## 21. How do you handle a parallel criminal and/or regulatory investigation?

### Finland

Author: *Anu Waaralinna, Mari Mohsen*  
at Roschier

Regardless of a possible criminal investigation, the employer must run its internal workplace investigation without unnecessary delay. A workplace investigation and a criminal investigation are two separate processes and can be ongoing simultaneously, so the criminal process does not require the workplace investigation to be stayed. Thus, parallel investigations are to be considered as two separate matters. The police may only obtain evidence or material from the company or employer if strict requirements for equipment searches are met after a request for investigation has been submitted to the police.

Last updated on 15/09/2022

### Hong Kong

Author: *Wynne Mok, Jason Cheng, Audrey Li*  
at Slaughter and May

Where there is a parallel criminal or regulatory investigation, the employer should handle the workplace investigation with extra care and ensure that it complies with all applicable legal requirements or lawful requests made by the relevant authorities concurrently. While there may be reasons why the employer wants to progress with its investigation as soon as possible, the employer should not take any steps that hinder or obstruct the parallel investigations. Therefore, it may be appropriate for the employer to stay its workplace investigation if its continuation may prejudice the parallel investigations.

The employer may also find itself duty-bound to stay the workplace investigation if it is subject to statutory secrecy obligations vis-à-vis the relevant law enforcement agency or regulatory body. As mentioned in question 10, several laws in Hong Kong impose secrecy obligations on any person who has acquired confidential information about certain law enforcement agencies or regulatory bodies and the investigations being conducted. The employer should assess whether they could continue with the workplace investigation without breaching secrecy obligations. The employer should take a prudent approach and may discuss with the relevant authority before proceeding further with its workplace investigation.

Depending on the nature of the matter, authorities in Hong Kong handling a criminal or regulatory investigation may be empowered to seize, or compel persons who are the subject of an investigation or assisting in such an investigation (which may include the employer) to produce, documents or evidence that are relevant to the matters being investigated. For example:

- the police or the Independent Commission Against Corruption may, under a search warrant (or in certain circumstances, without a warrant), inspect and take possession of articles or documents inside the premise of the employer they reasonably suspect to be of value to the investigation of the suspected offence; and
- the SFC or the Competition Commission may, under the SFO or Competition Ordinance (as applicable), require the employee under investigation or the employer to produce documents, attend interviews, and, specifically for the SFC, provide the investigator with all assistance he or she can give. Both authorities may also obtain a warrant from the Hong Kong courts to search the premise of the employer and obtain documents or information it reasonably believes to be relevant to its investigation.

Documents created and evidence gathered by the employer during its workplace investigation (such as witness statements or investigation reports) may be subject to production requests of, or may be seized by, the authorities mentioned above (unless legal professional privilege is attached). The employer should ensure that it complies with all lawful requests from the authorities.

Last updated on 27/11/2023



## Spain

Author: *Sergio Ponce, Daniel Cerrutti*  
at Uría Menéndez

Criminal or regulatory investigations may (and usually do) run in parallel to workplace investigations.

There is no need to stay the internal investigation and, in practice, this normally is not possible or advisable considering the substantially longer timeframe of criminal or regulatory investigations (which can extend for several months or years).

The police or a regulator may request a company to share any relevant information that it might have on the facts being reviewed by them. However, the company's obligation to provide that information would have to be reviewed on a case-by-case basis, depending on the information being requested (eg, whether it is sensitive to the business, such as trade secrets or internal correspondence) and the grounds to do so (if the police or regulator have a search warrant issued by a court or not).

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

Last updated on 15/09/2022

## Contributors



### Finland

Anu Waaralinna

Mari Mohsen

*Roschier*



### Hong Kong

Wynne Mok

Jason Cheng

Audrey Li

*Slaughter and May*



### Spain

Sergio Ponce

Daniel Cerrutti

*Uría Menéndez*



### Switzerland

Laura Widmer

Sandra Schaffner

*Bär & Karrer*