

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?

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).

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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).

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Contributors



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Sergio Ponce

Daniel Cerrutti

Uría Menéndez



Switzerland

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Sandra Schaffner

Bär & Karrer

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