

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 07. What data protection or other regulations apply when gathering physical evidence?

### Japan

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at Mori Hamada & Matsumoto

When collecting physical evidence that contains personal information, the Personal Information Protection Law and its related guidelines apply. In addition, when collecting physical evidence that contains privacy information or an employee's photograph, care must be taken to ensure that the right to privacy and the image rights are not violated.

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### Switzerland

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The Swiss Federal Act on Data Protection applies to the gathering of evidence, in particular such collection must be lawful, transparent, reasonable and in good faith, and data security must be preserved.<sup>[1]</sup>

It can be derived from the duty to [disclose and hand over benefits received and work produced](#) (article 321b, Swiss Code of Obligations) as they belong to the employer.<sup>[2]</sup> The employer is, therefore, generally entitled to collect and process data connected with the end product of any work completely by an employee and associated with their business. However, it is prohibited by the Swiss Criminal Code to open a sealed document or consignment to gain knowledge of its contents without being authorised to do so (article 179 et seq, Swiss Criminal Code). Anyone who disseminates or makes use of information of which he or she has obtained knowledge by opening a sealed document or mailing not intended for him or her may become criminally liable (article 179 paragraph 1, Swiss Criminal Code).

It is advisable to state in internal regulations that the workplace might be searched as part of an internal investigation and in compliance with all applicable data protection rules if this is necessary as part of the investigation.

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[1] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 52.

[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 148.

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## 16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?

### Japan

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A labour union has no legal right to be involved in the investigation. However, if there is a provision in the collective bargaining agreement between the company and the labour union that allows the labour union to be involved in an investigation conducted by the company or to receive disclosure of the results of an investigation, then such a provision should be followed.

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### Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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