



**18th Annual Compliance & Ethics Institute**  
Gaylord National, National Harbor, MD

## Managing an Investigations Docket in Asia-Pacific:

Key Regional Regulatory Issues and Top Tips for Conducting Cross-Border Investigations

**Sunday, September 15, 2019**

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Panasonic Avionics Corporation

**Jason Chang, Of Counsel**

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## Today's Agenda

1. Exploration of recent hot regulatory issues affecting the Asia region
  - Corruption
  - Technology and intellectual property
  - National security
2. Effectively manage and build cross-border investigations teams in Asia
  - Prioritize matters
  - Work plan
  - Interviews
  - Reporting
  - Key issues

## Presenters



**Jimmy Chatsuthiphan**  
Panasonic Avionics Corporation



**Jason Chang**  
DLA Piper US LLP

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## 1. Exploration of recent hot regulatory issues affecting the Asia region

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## 2018 Corruption Perceptions Index

### Notable Countries

North Korea	14
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## Recent regulatory issues affecting Asia

### US Foreign Corrupt Practices Act (FCPA) Enforcement

- 2019: Hong Kong's former home secretary was sentenced to three years in prison for bribing African officials on behalf of a Chinese energy company. He was also ordered to pay a \$400,000 criminal fine.
- 2018: Business services consulting firm paid more than \$9 million to resolve FCPA charges arising from improper payments made by two Chinese subsidiaries. The subsidiaries "used third-party agents to make unlawful payments to obtain data vital to the business as a provider of business financial information."
- 2018: A major food and beverages company paid the SEC \$8.2 million to resolve Foreign Corrupt Practices Act charges for improper payments by its Indian subsidiary.
- 2018: A major technology corporation paid the SEC \$13.9 million to resolve charges that it violated the FCPA by making illicit payments in its elevator business in Azerbaijan and aircraft engine businesses in China and elsewhere. Major technology corporation provided trips and gifts to various foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia through its subsidiaries. Company settled without admitting or denying the SEC's findings. It disgorged \$9 million plus pre-judgment interest of about \$919,000, and paid a penalty of \$4 million.
- 2018: A California based communications company agreed to pay \$16 + million to settle charges that it violated the FCPA with regards to its Chinese subsidiary facilitating improper payments to government officials.
- 2018: A multinational investment bank agreed to pay more than \$30 million to the SEC and a \$47 million criminal penalty to resolve charges that the firm obtained investment banking business in the Asia-Pacific region by corruptly influencing foreign officials in violation of the FCPA.

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## Protecting Technology, IP and National Security

### China Initiative and Economic Espionage Act

**Announced by US Department of Justice former AG Jeff Sessions on November 1, 2018**

*Designed to strengthen enforcement of US laws against "foreign economic aggression"*

1. **Trade Secrets Prosecution:** Civil and criminal trade secrets cases where technology or IP is transferred to Chinese individuals or companies
2. **Government Official / SOE Interactions:** Focus on identifying Foreign Corrupt Practices Act cases involving companies making bribe payments to government officials to obtain or retain business
3. **Chinese Investments/Acquisitions:** DOJ to implement the Foreign Investment Risk Review Modernization Act (FIRMA), including developing regulations under statute
4. **Apply Foreign Agents Registration Act:** Against those seeking to advance China's political agenda, including businesses such as consultants, PR firms, and lobbyists
5. **Identify Supply Chain Threats:** Particularly for telecommunications and 5G transition

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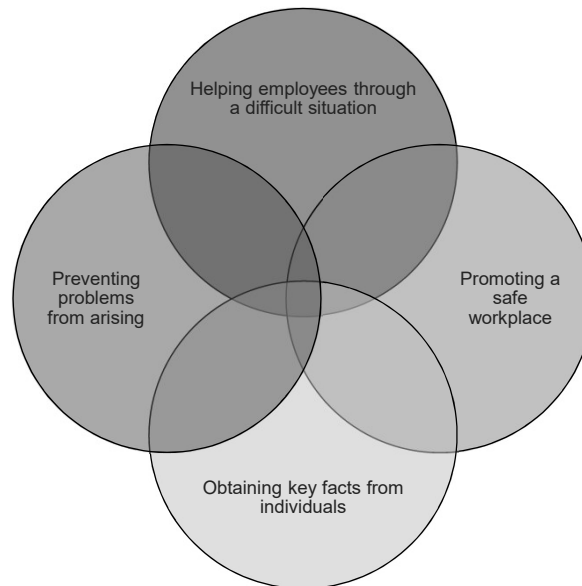
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## 2. Effectively manage and build cross-border investigations teams in Asia

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## Importance of an Investigator's Role



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## Investigation Elements – Process

- A collegial fact-finding that arrives at a rational conclusion
- Thorough interviewing of the reporter, the subject and fact witnesses with relevant information
- Gathering and analysis of relevant evidence
- Comparing the evidence to the applicable standard
- Assessing the credibility of each investigation participant and the strength of his/her evidence
- Reaching a legally defensible determination of whether the improper conduct actually occurred

**REMEMBER:** You do not investigate every report; you *resolve* every report.

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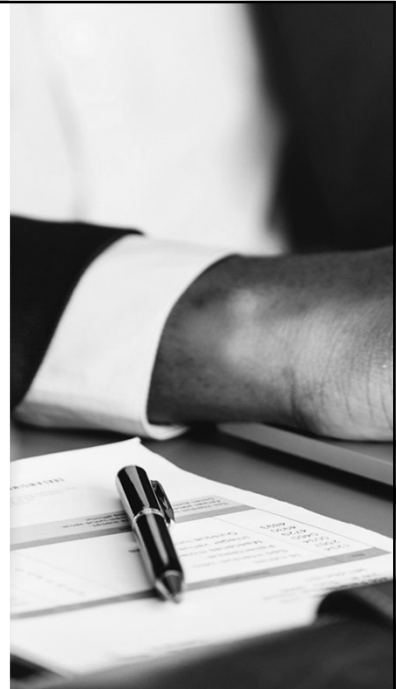
## Investigation Lifecycle



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## Prioritize and Identify Matters

1. Severity of legal issue (civil and/or criminal)
2. Dollar amount / value
3. Number of employees potentially involved
4. Seniority of employees potentially involved
5. Credibility of the whistleblower
6. Quality and specificity of the information provided
7. Potential outcomes of an investigation
8. Whether regulatory authorities are or should be involved
9. Legal obligations to investigate and/or disclose
10. Company policies and procedures including any that reflect the above



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## Build the Right Team

1. Aligned with global team
2. Experienced cross-border investigation attorneys
3. Knowledge / experience with relevant substantive issues
4. Experience with local legal issues
5. On-the-ground presence
6. Working experience with relevant government authorities
7. Fluent in local language, understand local culture



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## Preliminary Steps – Work Plan

☒ Importance of a work plan

☒ Flexibility

☒ Revise, revise, revise

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## Preliminary Steps – Work Plan



Work plans can take on many forms, but they should all contain the same important details



**Consider the facts at issue**

- Background
- Allegations



**Consider the sources of information**



**Research**

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## Reviewing Documents Prior to the Interview

### ☒ Review Policies and Procedures

- Have you read the applicable policies and procedures before the interview?
- Have you determined what the potential issues might be?
- Have you identified the purpose and objectives of the investigation?
- Have you considered whether you will need legal or compliance assistance?

### ☒ Review Work Plan



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## Purpose of Interviews

### ▪ Fact gathering

- Determine what happened in the matter under investigation

### ▪ Understand what is in the documents

- Who wrote what, why, for whom, and what did it mean?

### ▪ Learn what is not in the documents

- Discuss the issues generally with the individual, get their understanding of what happened
- Identify other areas to explore, additional people to interview

### ▪ Identify documents we may not have yet

### ▪ Assess credibility and skill of key individuals

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## General Interview Advice

- Build a rapport
- Be a good listener
  - 80-20 rule
  - Active listening
- Ask straightforward questions
- Start with non-confrontational questions
- Find out the basis of the person's knowledge
- Avoid compound questions
- Note any mitigating circumstances

### When You Begin the Interview

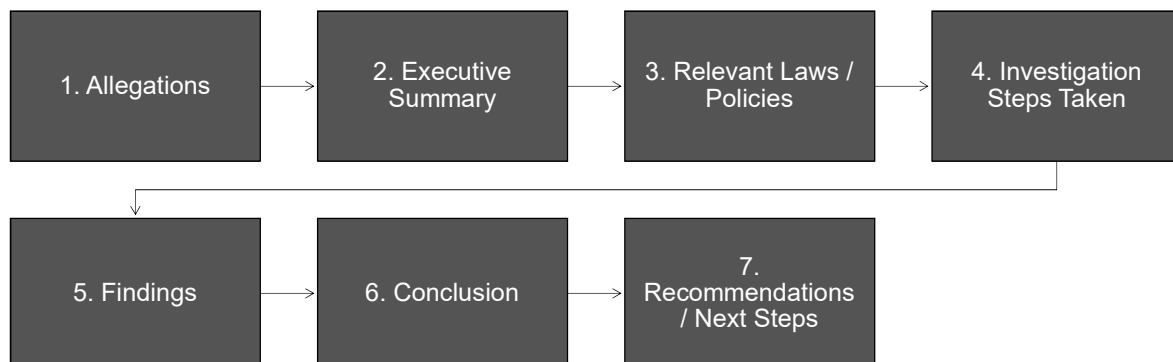
- Confidentiality
- No retaliation
- Upjohn Warning
- Importance of cooperation
- Set expectations

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## Final Report and Documentation



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## Other Key Considerations

### **Roles and Responsibilities**

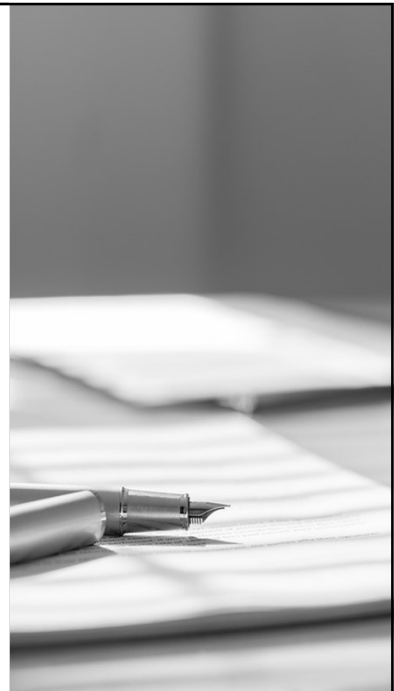
- Investigators – in-house v. outside counsel/accounting firms
- Legal oversight / privilege

### **Fact-Finding**

- Data collection / analysis
  - Location / privacy law implications
  - Data retention/litigation holds
- Employee interviews
  - Local law requirements
  - Language
  - Cultural differences
  - Time zones

### **Report Findings / Remediation**

- Audience
- Local law requirements



## Disclaimer

These are general guidelines and best practice tips

Use your judgment

Based on the type of investigation some of these will not be applicable

Consult your legal department

## Questions?

## Jimmy Chatsuthiphan

Jimmy Chatsuthiphan, a licensed attorney, is the Director of Global Compliance Investigations for Panasonic Avionics. Jimmy has recently returned to America after a six-year stint living and working in Southeast Asia, during which he counseled multinational companies across a wide range of compliance, investigations and dispute resolution matters. Previously based in Asia-Pacific as the Senior Director of Ethics and Compliance for Diebold Nixdorf, Jimmy shares his unique insight into a region of the world where there is often no reward without risk. He is also the former Global Head of Compliance for Diebold Nixdorf's Hardware Business.

Jimmy draws from over a decade of experience at law firms, including several years with DLA Piper where he led the regional investigations and compliance practice from the firm's Thailand office. He was recognized in the *Legal 500* rankings in Asia-Pacific as possessing "expertise in regulatory compliance and investigations." He is a Certified Compliance & Ethics Professional – International (CCEP-I), and was appointed to sit on Thailand's ICC Corporate Responsibility & Anti-Corruption Commission.

Jimmy has received several prominent awards for his longstanding passion and commitment to high-impact pro bono projects and ethical business practices. At his previous firms, he was named a "Corporate Responsibility Champion" and "Pro Bono Shining Star". He also served as a volunteer lawyer through the Veterans Consortium Pro Bono Program, representing U.S. military veterans and families before the U.S. Court of Appeals for Veterans Claims.



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#### Education

Cornell University Law School, J.D.  
University of California, Los Angeles, B.A.

#### Professional Qualifications

State Bar of California  
District of Columbia Bar

#### Government Experience

Law Clerk, Hon. Bruce E. Kasold, U.S. Court of Appeals, Veterans Claims, Washington, D.C.  
Extern, Hon. Ronald S.W. Lew, U.S. District Court, Central District of California

#### Languages

English

# Jason Chang

Jason Chang is an international lawyer who advises clients on compliance and risk mitigation, government investigations and inquiries, white-collar crimes, and US-China transactions and operations. Having been based in China for over six years (2011-2017), Jason is fluent in Mandarin-Chinese and has conducted investigations abroad in China, Hong Kong, Taiwan, Japan, Vietnam, Thailand, Malaysia, Singapore, Philippines, Indonesia, India, Dubai, Australia, Canada, and Russia.

Jason advises clients on matters in relation to the Foreign Corrupt Practices Act (FCPA) and other anti-bribery laws, US Securities Exchange Commission (SEC) and Department of Justice (DOJ) investigations, litigation, US export controls and CFIUS, supply chain security, trade secrets, enhanced due diligence, serious employee misconduct, fraud, social engineering scams and cyber threats, China data transfer, as well as dawn raids and factory takeovers.

Jason also advises Asian, European, and North American multinational corporations on their global compliance programs. Jason helps companies mitigate legal and regulatory risks around the world by advising on proactive initiatives such as compliance reviews, risk assessments, program implementation (e.g. codes of conduct, controls, and policies and procedures), and training.



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### Education

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