

## Compliance Trumps Litigation In Asia E-Discovery

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Economic globalization is driving an increasing amount of activity in Asia, taking U.S. organizations to the Far East and into highly charged legal and compliance environments. This, coupled with an increase in regulatory activity stemming from the Foreign Corrupt Practices Act, U.K. Bribery Act and other enforcement acts, is confronting multinational corporations with the need to collect electronic documents from data sources in Asia. In the global economy, disputes are not so neatly limited along national borders, and offshore regulatory investigations have impacted operations in the region for many years.

E-discovery in Asian courts is hard to characterize in broad strokes, with very little consistency between countries in the region and few jurisdictions with typical common law that may have e-discovery requirements (such as Hong Kong and Singapore). A recent study conducted among corporate legal departments and law firms in the region[1] uncovered a number of strong but changing currents that provide valuable insight not only for corporations, but also for federal agencies — particularly regulatory agencies — in terms of understanding the complexities of migrating data from Asia to the U.S. for investigative review.

One key finding is the increasing number of e-discovery projects resulting from regulatory investigations and other compliance-related issues rather than civil litigation. Sixty-seven percent of respondents cited regulatory activity and/or internal investigations as the type of matter currently demanding the most need for e-discovery. This uptick is driven partly by regulators outside of Asia, but recently more so by Western-headquartered multinational companies conducting self-examining investigations and internal compliance reviews. Regardless of the driver, these investigations put a significant strain on resources when dealing with obtaining, processing and reviewing data residing in Asia. It is important for those involved in e-discovery that reaches to Asia to become familiar with the challenges that come into play.

Recent increased cooperation between EU and U.S. regulators is guaranteed to cause more investigations — and more e-discovery — in a greater number of countries. There are also delicate risks in terms of complying with various countries' privacy and other laws; disclosure of documents residing in various Asian countries — specifically China — may be prohibited under the State Secrets Law, Archives Law or other privacy protections. In fact, managing data privacy laws and confidentiality concerns is the



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single biggest challenge faced by respondents in the study, with 79 percent citing a specific risk of privacy or data protection in response to the question of what new Asia regional laws will impact the management of electronic data in legal review.

This challenge is also the main reason 85 percent of respondents said they would consider using a mobile data processing and document review environment, that would enable lawyers to go to the data source and conduct an investigation on-site, or process the data for export in compliance with country-specific data regulations. This is a highly effective way to address the Law of the People's Republic of China on Guarding State Secrets, which requires documents to be reviewed and cleared of secrecy before leaving China.

As Asian economies grow, the problems identified in the survey are likely to get worse before they get better. Whether related to a particular regulatory requirement, a state secret in China or common law issue in Singapore, it makes sense for e-discovery projects in Asia to include a local resource with in-country experience and knowledge. Organizations dealing with data requests spanning borders to Asia should work towards a strong understanding of the region's culture, legal issues and language barriers to work towards a thorough and manageable process.

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[1] E-Discovery in Asia: Legal, Technical and Cultural Issues, FTI Technology, September 2014. Full study available at: <http://www.ftitechnology.com/Resource-Center/White-Papers/E-Discovery-in-Asia--091514.aspx>