

James Bond or Inspector Clouseau?

Traps for the Unwary in Cross-Border Investigations

By James B. Mintz and Edward Frost

The globalization of American business has put a premium on gathering information from overseas, whether to get background on a potential deal partner, find out why foreign customers are deserting you for your

competitors, or to track down the people responsible for counterfeiting your products.

Gathering reliable facts is difficult enough when confined to the United States. But differences in language, laws, cultures and time zones magnify the problems when your subject is across borders. The globalization that has occurred in information technology helps somewhat, but when our investigators get together for training sessions, they always have stories to share about pitfalls encountered while investigating abroad.

What follows are some of the problems we've encountered when gathering information overseas, and some advice about how to address them.

LIMITS OF THE COMMON SEARCH ENGINES

We've all become accustomed to using search engines like Google, so we can benefit from all that information that pours into the Internet and check people out worldwide. What turns up seems so comprehensive that sometimes it's easy to conclude that's all the information that's out there. A business group might get comfortable, for example, because Google shows them nothing negative – their prospective Russian partner is clean!

Nexis searches too have become standard operating procedure for many business people doing overseas research. Like Google, Nexis provides fast and easy access to computerized information, but it too has big gaps. The

information provided by Google and Nexis checks is incomplete, and therefore the comfort they provide is false.

Some of these gaps can be filled by using country-specific and less well-known databases that go deeper. These new resources offer business people doing cross-border deals the very thing they most need: access to the international public record on people and companies. This record often includes corporate and regulatory filings, news articles and reports by nongovernmental agencies. In some countries it includes criminal convictions, civil litigation and bankruptcy filings, as well.

It's out there: everything from Swiss corporate records to the name of the country club to which a Japanese executive belongs; from

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the enforcement proceedings of the Budapest Stock Exchange to the names of the thousand people sanc-

Munich you have to use the German city name, Muenchen. In the French paper, *Le Monde*, you need to

Washington, D.C.

Other tips: Try the library in the local university's business school, or consult *Martindale.com* to find an American-trained lawyer in a law firm on location. We also contact investigators we know in nearby countries, and ask them for recommendations.

We find it helpful to send a local to copy incorporation records, which are widely available around the world. Even in secretive Caribbean havens, some corporate information is available, although it may be only the date the company was started and the name and address of the lawyer who incorporated it.

We've used local investigators to gather documents as diverse as deeds and mortgages in Italy, criminal records in Colombia, marriage and divorce records in Panama; and news articles in Nigeria.

Litigation files are harder to get in some countries, but not impossible. In some Latin American countries, for example, notaries can look at documents from otherwise closed court files.

PEOPLE ARE THE BEST SOURCES, BUT BE CAUTIOUS

The best lead you may get from gathering information, both electronically and on paper, may be the names of knowledgeable, reliable people abroad. These may be regulators, competitors, litigation opponents, former employees, academics, reporters, or others.

An interview with the former manager of the Indonesian company you are in a dispute with may be just what you need to prevail. The problem is how to talk to him without having your investigation surface. If the consequences of having an investigation come to light are too severe, we may choose not to do any interviews. But there are ways to go ahead if you decide it's worth

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tioned for corruption by a commission in India; from a Swedish business association's warning list of companies engaged in fraudulent practices to a database on international shipping fraud. In Italy, the Alidata database can be consulted to check for past Italian lawsuits involving individuals or companies. We even use one on-line news service that specifically covers scandals in Caribbean tax havens.

HOMETOWN NEWS

Where do you start?

A good rule in cross-border investigations is never to do consequential business with someone until you have checked the archives of his or her hometown newspaper, wherever in the world that paper is. A book called *Fulltext Sources Online* can point you to the databases that carry everything from the *South China Morning Post* and the *Frankfurter Allgemeine Zeitung* to the *Manila Standard*. But it takes some skill to use these resources. People in your office who do these searches should have an investigative mentality and be thoroughly trained in the databases they're using.

One tip on searching foreign-language newspapers: In the search strings, use proper nouns (like names of people or companies) that don't need to be translated. Otherwise, be aware that you'll have to use the foreign-language version of some terms. In German papers, for example, to find anything in

search under "blanchir d'argent" to find stories about money laundering.

BEYOND THE ON-LINE DATA

Can you rely on the information you see in websites and databases?

In some countries, official regulatory and other data is either unavailable, incomplete or, worse yet, unreliable. In those cases you need to look for sources to bridge the gaps.

The corporate records, legal abstracts and news articles you gather initially can point you to a better information source, the documents themselves, in the files of that country's government agencies, courts and libraries.

You might think of the data you have in hand as a map of the territory that needs to be explored. Sometimes you can go there yourself. You pick up a phone and call the Office of Superintendent of Bankruptcy in Canada, for example, and order a search for less than \$10. But sometimes you will need to find a reliable person who knows the way. Ideally, that person will have a network of runners who can obtain documents from the public reading rooms, clerk's offices, and other information sites that you've already identified on-line.

Commercial attaches in U.S. embassies around the world often can recommend a local investigator. And sometimes we do the reverse: We call a country's embassy in

the risk.

The Internet provides resources that often make it possible to locate these knowledgeable people yourself. By mining international telephone directories and other websites, you can pick up a telephone and reach people directly. They are clearly free to hang up, but often they are willing to talk.

For example, one of our colleagues who was trying to reach a businessman in the Far East found a phone number for him in an Internet White Pages listing for his city. We called from the U.S. at the appropriate time of day and reached his wife, who spoke English and gave us his cell phone number. Within minutes we were talking to him while he ate his lunch in a park in Beijing.

CAN YOU TRUST THE LOCAL INVESTIGATOR?

You will sometimes need the ability to identify and manage private investigators in out-of-the-way places. The hazard here is that you are handing your sensitive inquiry over to someone you may not know well.

Many people overseas who call themselves private investigators do their jobs differently than we do in the United States. Some will not treat your information with the confidentiality you require or be as cautious in gathering facts as you wish. These problems are actually fairly common, and go beyond the normal difficulties in communicating across borders. Some examples:

- **In some locations** there are investigators who may sell clients out to the people or companies being investigated. In outlining the assignment, you have unwittingly given them information — minimally, the information that you are investigating this subject — and that information could be more valuable to the subject of your investigation

than the fees you're paying the investigator.

- **You may give** a complicated assignment to an investigator overseas, asking him to find out whether a particular set of facts are true or not. He understands what you're looking for and says he knows the right people and he'll check with his sources. His report back? "Yes, they confirmed it." But he refuses to disclose his sources or what exactly they said, and you're stuck not knowing whether he got new information or is just recycling what you already knew.

- **In some countries**, private investigators tend to come out of the government. They are former police officers or intelligence agents. Particularly in authoritarian countries, their habit, if not their requirement, is to check in with intelligence officials when doing an assignment for an overseas client. If the person you're checking out is close to that government, word of the inquiry is likely to be leaked back to the person.

- **Sometimes investigators** abroad will use a pretext or other means to contact the subject of your investigation, even if you give clear instructions not to. (These investigators are often unaware of the rule, under the canons of lawyer ethics, prohibiting an agent for one side from contacting an opposing litigant without counsel present.)

MAINTAINING CONTROL

When you have to rely on a local investigator, there are ways to minimize these problems. Before hiring anyone, seek a recommendation for an investigator whom others have found reliable and trustworthy. These can come from your attorneys, from overseas branches of U.S. law firms, from your international business partners and from investigators you may know in the United States.

Spend some time interviewing the local investigators, and pay particular attention to what they say when you ask how they gather information. Ask if they have ever worked for U.S. clients before, and whether they can give you references. And check them.

Don't tell the investigator the whole story. To protect yourself against someone selling you out to your target, be cautious about how much information you give out, particularly at the beginning. Disclose only enough to determine whether you think the investigator is able to handle your assignment, and pay attention to the questions they ask you back. Are they looking for details that go beyond what you think they need to know?

Ask carefully about what methods will be used. Often your assignment will be to ask someone to search the local press or gather public records for you. But we have talked to investigators who did not distinguish between getting information from news searches and, for example, calling neighbors.

As business opportunities multiply worldwide, so too do the sources of needed information and the methods of finding it. We say invest globally, but investigate locally.

James B. Mintz is president and Edward Frost is a managing partner of the James Mintz Group Inc. (www.mintzgroup.com). The firm provides investigative services worldwide to corporate counsel, executives, board members, and their outside legal and financial advisers, before deals, during disputes and after frauds.