

# MAXIMISING PRIVILEGE PROTECTION UNDER US AND ENGLISH LAW

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Legal Briefings - By **Scott S Balber, John J O'Donnell, Isha Mehmood and Kathryn Boyd**

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When learning of a potential criminal or regulatory issue - whether through receipt of an information request from the authorities or through an internal mechanism - a firm will usually conduct an internal investigation, whose purpose is to understand the scope of the issue, remediate the problem and formulate a response to regulators and prosecutors, civil plaintiffs and other constituencies.

It is imperative that the internal investigation be conducted so as to maximise the protections of legally applicable privileges. If privilege is protected from the outset, the company can then determine the extent to which privileged materials should be withheld from regulators or civil plaintiffs, or the extent to which the company will waive the privilege.

This article examines the differences in approach to privilege issues under US and English law, and suggests some measures companies can take to maximise the privilege protections in the conduct of internal investigations.

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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