

RECOMMENDED HACKS WHILE PLANNING AND PREPARING FOR AN INTERNAL INVESTIGATION FOR COMPANIES

SETTING THE CONTEXT

An internal investigation is a formal inquiry of an event of fraud or irregularities mandated typically by the Audit Committee or the Senior management of a Company to check for any violation of the Code of Conduct or any workplace policy based on a whistleblower complaint received, observations noted during an internal audit and/ or any other red flags noted by the senior management. An incident of fraud can lead to material revenue leakage and irreparable reputational damage to the Company, if not investigated in a timely manner and corrective measures taken. With our working experience of assisting companies in conducting internal investigations, we have attempted to state certain recommended tips for planning an effective and efficient internal investigation.

PLANNING AN INTERNAL INVESTIGATION

At the outset, detailed planning of an internal investigation is critical for a comprehensive result-oriented and fruitful outcome. There are no straight-jacketed prescribed work procedures or methods to be followed for an internal investigation as each allegation and the modus operandi that may have been used, the fraud factors would differ in each of the matters. However, before commencing an investigation, a work plan needs to be put in place based on the preliminary information available on the fraud allegation that could be tweaked or modified based on the ongoing outcome of the procedures performed. Below are certain recommended planning steps before commencing the investigation:

- a. **Identifying the Targets:** Before commencing the investigation, based on the whistleblower complaint or the red flags noted in any process or transaction, it is important to list the names of suspected employees and/or business partners of the Company.
- b. **Tasking of an independent internal investigation:** An investigation in a Company should be overlooked by the Audit Committee or any committee/ senior management bestowed upon the authority to conduct a formal enquiry into potential irregularities or wrongdoings by the employee(s) of the Company. The investigation could be conducted internally or by appointing external consultants. The suspected employees or their dotted line process owners of the Company should not be a part of this investigation to maintain the independence of the proposed investigation. A multi-department head ideally would need to be involved in the investigation namely Information Technology, Human Resources, Chief Finance Controller among others providing the process understanding and information that may be required to the investigation team.
- c. **Robust scoping and objective of the Investigation:** A clear scoping and objective of the investigation must be drafted and documented to plan the broad work procedures that need to be performed to achieve them.
- d. **Detailed Information Request List:** A comprehensive requisition list of information, documents, and access to the accounting and electronic data would be required to be reviewed in order to achieve the objective of the investigation. This needs to be compiled and submitted to the relevant teams of the Company.
- e. **Time-bound investigations:** The longer you postpone the investigation, the more serious the liability could be, particularly in cases like sexual harassment or workplace violence situation. Once you learn of a serious problem, it is recommended to mandate the investigation on a war footing basis.
- f. **Legal hold:** A 'Legal Hold' letter notifying Target employees under investigation to not delete any electronically stored information ("ESI") on the IT assets provided to them by the company or discard any paper documents in their custody that may be relevant to the ongoing investigations and the same would be recommended to be sent from the company's legal counsel.

A prompt and thorough work plan is imperative to respond appropriately to situations and to conduct a smooth and structured investigation which would finally lead to protect the company's interest.



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