



Internal Investigations 101

BOARD & AUDIT COMMITTEE COMPLIANCE CONFERENCE

FEBRUARY 19, 2019

Investigations - Purpose

Fraud case shows importance of internal investigations

'It's the Human Way': Corruption Scandals Play Out in Big Cities Across U.S.

DOJ Recovers \$2.8 Billion in False Claims Act Cases in FY 2018

Warren Buffett: Anonymous Letters & Hotline Calls Best Sources To Find Out Something's Wrong | CNBC

Investors Say 'Us Too' In Wake Of Sexual Misconduct Claims



Investigation Infrastructure

- An ethics and compliance investigations policy with non-retaliation, duty to cooperate and confidentiality provision
- Report intake work instructions with report assessment steps and escalation criteria
- Toolkit with template documents for consistent investigation task
- Training for Investigators
- Documented process for reporting the results of the investigation upward



Investigations - Resources



- Technical skills
- Language skills
- Interview skills
- Cultural awareness
- Location
- Ease of deployment
- Risk tolerance

Investigations - Stakeholders

- Legal
- Finance
- Human Resources
- IT
- Risk Management
- Operations
- Sales
- Marketing



- Location
- Expertise
- Connections
- Influence
- Intel

Investigations – “Triage”

- Who receives the report?
- Who reported?
- What happened?
- Why did this happen (root cause)?
- What needs to be done?



- Who should be assigned to investigate?
- Where else can this be happening?
- Who needs to be notified?
- Do we need outside assistance?

Investigations - Triage Checklist (example)

1 General Information		3 Resource Information	
2 Investigation Information		4 Notifications / Confidentiality / Privilege	
1.1			
2.1	Potential Issue/Topic		
2.2	Potential Subject/Source		
2.3	Level of Complexity		
2.4	Level of Urgency/HR involvement		
2.5	Management/HR/Department/Other Involvement		
		5 Reporting	
			For reference only

Investigations - Privilege

- Invoking, maintaining and protecting privilege
- Privilege and work product protections
- Difference between privileged and confidential
- When to go “pencils down”



- In-house/outside counsel limitations
- Documentation of findings
- Interview protocols
- Limiting distribution of privileged or confidential information

Investigations – Privilege (cont.)

↙ DOs / DON'Ts ↘

- Notify Legal of the issue by email
- Mark email 'Privileged & Confidential' at the top
- **Request advice** from Legal in the email
- Briefly describe the issue identified
- Draw legal conclusions in the email
- Over-circulate the email or other information
- Take further investigative steps before consulting with Legal

Investigations - Controls and Policies

- Evaluate internal controls periodically
- Conduct risk analyses
- Develop proactive audits, reviews, and training programs based on risk
- Identify key third-party relationships
- Conduct training
- Review and update your policies
 - Code of Conduct (CAN vs MUST report)
 - Whistleblower and Anti-Retaliation
 - Conflicts of Interest
 - Acceptance and Solicitation of Gifts
 - Personal Relationships
 - Social Media



Investigations - Tracking

What are you investigating?

- Employee Ethics Line Reports
- Social Media Posts
- Management Reports
- Internal Audit Results
- Company Policy and Code of Business Conduct Violations



How are you documenting, tracking, and reporting on investigations?

Effects of Poor Investigation

- Inappropriate Discipline
- Litigation – “wrongful termination”
- Claims of retaliation
- Destroy morale
- Damage to company/employee reputation



Case Study: The Purple Pig Company

- Purple Pig is a global manufacturer and service provider of high-tech widgets
- The Pig has made great inroads into several companies in the Mideast – particularly Israel, Turkey and Egypt
- To advance sales in these countries, The Pig promoted country managers for each country – Mr. Israel, Mr. Turkey and Mr. Egypt
- These country managers were instructed to keep their customers happy and run efficient operations
- Mr. Israel was from Israel and had gone to military school with the Chief Procurement Officer (CPO) of The Pig's largest global customer, ABC company
- Although The Pig had a Project Manager to run the projects in Israel, Mr. Israel and ABC's CPO often by-passed the Project Manager. In fact, Mr. Israel and ABC's CPO often dealt with each other directly on most items related to the contract for the widgets in Israel. They approved invoices for products that were delivered, found new suppliers of services in country, and directed The Pig's sourcing department to use these suppliers

Complaints began...

- The Pig's Project Manager began complaining because he was not being included in decisions relating to the project in Israel
- ABC's CPO became frustrated with The Pig's Project Manager and called The Pig's President, demanding that the Project Manager be removed from his program.
- The Project Manager was quickly removed as a major new competitive proposal was being submitted to ABC company
- A low level buyer refused to place a contract with the new suppliers identified by Mr. Israel and ABC's CPO
- Mr. Israel identified a smaller sourcing department in one of The Pig's remote locations and asked them to take over sourcing for ABC Company because the smaller sourcing department was more nimble
- The Project Manager called The Pigs Ethics Hotline and complained he was fired for retaliation
- The attorney assigned to the Israel project conducted an investigation. He interviewed Mr. Israel and concluded the complaint was unfounded. He closed the investigation.

ANY CONCERNS?

Questions/Contact

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