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Whitepaper

Conducting Fraud and Corruption Investigations

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Conducting Fraud and Corruption Investigations

Contents

Background	2
- Purpose	2
- Background	2
Discussion	2
- Issue	2
- History	2
- Discussion	2
Conclusion	5
- Summary	5
- Conclusion	5
Bibliography and References	5
- Purpose of White Papers	6
- Author's Biography	6
About the Institute of Internal Auditors–Australia	6
Copyright	6
Disclaimer	6

Background

Purpose

This White Paper aims to give guidance to internal auditors in key aspects of the investigation of fraud and corruption. It is not a substitute for obtaining formal training or professional and legal advice.

Background

Internal auditors are frequently called upon to investigate allegations of fraud and corruption, to undertake audits to assess whether a formal investigation is required, and to assist in investigations undertaken by forensic accountants or law enforcement authorities.

Internal auditors are required to have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

In many organisations, Internal Audit is allocated fraud investigations because there is no other area of the organisation to perform the role. Management generally

assumes that internal auditors are qualified to perform fraud investigations.

However, internal auditors in many organisations do not possess the necessary knowledge and skill for successful fraud investigations, and risk compromising investigations by being unaware of investigation protocols.

It may be beneficial for internal auditors to receive training by experts in investigation techniques to further recognise 'red flags of fraud', and to assure evidence may not be inadvertently compromised should an alleged fraud be discovered during an audit.

Discussion

Issue

Investigating fraud and corruption requires a methodology and techniques. This White Paper provides an outline to help internal auditors undertaking fraud and corruption investigations.

History

The Australian Standard on Fraud and Corruption Control, and various public sector guidelines on fraud and corruption control, recognise that investigations are an essential component of any strategy to effectively manage risks associated with fraud and corruption.

Discussion

Duties and responsibilities of investigators

Investigators should be clear about their rights to undertake investigations, and be aware of any protocols within the organisation regarding conduct of investigations. In disciplinary investigations, the principles of natural justice or procedural fairness should be observed. These include giving the respondent the opportunity to be heard on all allegations.

Investigators must be impartial. This includes collecting all relevant evidence, for example not ignoring evidence that supports the respondent's innocence. The conduct of an investigation must be thoroughly documented, especially all evidence collected.

Investigations should be well-documented. The maxim that 'the palest ink is better than the best memory' is applicable. Contemporaneous notes about how the investigation was

Conducting Fraud and Corruption Investigations

planned and conducted will typically be more credible to a tribunal or reviewer than oral testimony.

Investigations should be undertaken in a timely manner and must comply with all relevant legislation.

Conducting fraud and corruption investigations

The typical stages of a fraud and corruption investigation are:

- Receiving and recording allegations.
- Initial assessment.
- Initial report.
- Planning.
- Evidence collection.
- Assessing the evidence.
- Reporting the findings.
- Preparing a police or prosecution brief.

Receiving and recording allegations

Avenues for reporting suspected fraud and corruption should be established and communicated to people who may become aware of fraudulent or corrupt conduct. When reports are received, they should be completely and accurately documented. Contemporaneous notes should be taken of conversations and telephone conversations, so that the contents and circumstances surrounding any reports are documented. E-mail chains and other social media communications should be preserved.

Initial assessment

List the allegations contained in the report and divide each allegation into its component elements. For example, the elements of an allegation of a conflict of interest might be that the person had a conflict of interest, failed to follow the procedures for conflicts of interest, reasonably knew that the procedures should be followed, and possibly improperly favoured a personal interest.

It is useful to assess whether any particular legislation is relevant to the matter and what the implications are of that legislation. Examples include criminal legislation which may require more stringent rules of evidence to be applied, and public interest disclosures legislation which may require additional protection for the reporter.

The initial assessment may also include considering whether there have been similar matters or allegations in the past,

regulators' pronouncements and perspectives, possible operational and strategic implications, external referrals received, investigative resources available, time factors, relevant risks and other appropriate issues. The assessment may include whether it is best to conduct the investigation internally, refer it to an investigating authority for investigation, contract a consultant investigator, have a lawyer commission the investigation, or combine the above.

Initial reports

It may be appropriate to report the matter promptly to regulators, law enforcement, insurers or other organisations due to legislative, regulatory or contractual requirements or established protocols.

Planning

Generally, in fraud and corruption investigations you will plan to collect evidence covering what actually occurred, was it against the rules, and did the respondents know or should have known the conduct was forbidden. The investigation should be planned to ensure it covers each element of each allegation. Planning should take into account any legislative or other obligations to protect whistleblowers.

When planning investigations into suspected fraud or corruption, it may be useful to consider the IIA White Papers dealing with indicators of fraud and corruption, and the framework for corruption-related risks in decision-making.

Evidence collection

A general principle is to collect all available, relevant evidence. Evidence should be collected in a way that is most likely to enhance the admissibility of evidence in a tribunal. If a prosecution or litigation is anticipated, then evidence collected should be in accordance with the rules of evidence that apply to that jurisdiction.

The chain, or continuity of possession, should be documented where applicable so the investigator is able to show the court the evidence collected is the same as is being presented to the tribunal. This is done through procedures such as retaining one original receipt for each item of evidence, maintaining a register of transfers of evidence, documenting the collection of each piece of evidence, tagging evidence, and secure storage.

Conducting Fraud and Corruption Investigations

When collecting electronic evidence, it is often advisable to obtain the advice or services of a forensic IT professional to ensure the evidence is forensically sound and acceptable to a tribunal. Generally, the original media on which data is stored is not used for examining the evidence. A copy is usually made which is used for examination.

Documents and exhibits collected should be adequately preserved. For example, any highlighting or writing of notes should be on copies, not the original document.

Interviews should be conducted in accordance with any organisational policies and practices, and in a manner that is likely to ensure that information obtained is admissible in court.

In many cases, it is advisable to interview complainants. This helps ensure that you obtain full information from them, and helps reassure them that you are taking their complaint seriously.

In most investigations, respondents are interviewed towards the end of the investigation, so that questions put to them take into account the evidence collected. In disciplinary interviews with respondents, if you are relying on certain evidence to make an adverse finding, it is generally necessary to ask them to respond to that evidence.

Interviews should be carefully planned to ensure all pertinent information is collected in a way that enhances its credibility. Planning includes what topics to cover, their order, the order of questions, the way that important questions will be asked, the evidence to be presented to the interviewee, detailed knowledge of what other interviewees have said, and what other evidence has been collected.

It is important to keep records of all interviews. Typically, either a written statement is taken from the interviewee that contains all the pertinent information, or a written record of interview is made. If a statement is taken it is the interviewee's statement and should be in their words. The interviewee should be asked to sign the statement and their signing should be witnessed and dated.

A record of interview is a record of what each person said during the interview. This can be a video or voice recording or someone writing or typing what each person said.

If a video or voice recording is made, it should be done with the person's knowledge. It is advisable to tell the person and ask them to acknowledge that they are aware of the recording a second time, after the recording has commenced, so you cannot be accused of secretly recording the interview. If a person's permission is required in order to make a recording, you should have them confirm when the recording is being made, that they have given their permission.

If there are formalities required by your organisation's investigation protocols, then you should ask the person to confirm that the protocols were complied with, and record the confirmations.

Interviewees should generally be offered a copy of their record of interview, and asked to sign the transcript of the record of interview.

In Australia, it is important that witnesses are not offered inducements or threatened in order to obtain admissions or confessions.

Assessing the evidence

Investigators should check that every element of every allegation has been properly covered in the investigation.

It may be useful to assess whether serious internal control breakdowns were identified during the investigation, and how the controls can be improved to prevent similar breakdowns.

Reporting the findings

The investigation report should be written in an appropriate format for the reader and take into account relevant considerations, which may include the purpose of the report, who may obtain access to it, protection for whistleblowers and fair treatment of respondents and others.

Investigation reports typically include an executive summary, background, conclusion and recommendations. For each allegation, it is useful to include details of the allegation, relevant evidence collected, an assessment of the evidence, and a conclusion about the allegation. Appendices may be included that provide useful information to the reader.

Special reports may be prepared for organisations such as regulators, insurers and anti-corruption bodies.

Conducting Fraud and Corruption Investigations

Preparing a police brief

If a criminal offence has been committed and there appears to be adequate evidence to support either prosecution or further investigation by the police, it may be appropriate to prepare a police brief. A police brief should detail and list the evidence collected, and should give an overview of your investigation. Generally, your investigation report is an adequate overview of the investigation.

Conclusion

Summary

Investigators should be clear about their rights to undertake investigations, be aware of any protocols within the organisation regarding the conduct of investigations, comply with external requirements, must be impartial and must thoroughly document the conduct of the investigation. Investigations should be undertaken in a timely manner and must comply with all relevant legislation.

The typical stages of a fraud and corruption investigation are receiving and recording allegations, conducting initial assessments, making initial reports, planning, collecting evidence, assessing the evidence, reporting the findings and preparing a police or prosecution brief.

Conclusion

This White Paper presents some guidance for internal auditors and others undertaking investigations. It is noted that professional and legal advice should be obtained, and formal methodologies should be used.

Before commencing investigations, internal auditors need understand what is required for successful fraud and corruption investigations, so they do not risk compromising investigations by being unaware of investigation protocols.

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Conducting Fraud and Corruption Investigations

Purpose of White Papers

A White Paper is an authoritative report or guide that informs readers concisely about a complex issue and presents the issuing body's philosophy on the matter. It is meant to help readers understand an issue, solve a problem, or make a decision.

Author's Biography

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About the Institute of Internal Auditors–Australia

The Institute of Internal Auditors (IIA) is the global professional association for Internal Auditors, with global headquarters in the USA and affiliated Institutes and Chapters throughout the world including Australia.

As the chief advocate of the Internal Audit profession, the IIA serves as the profession's international standard-setter, sole provider of globally accepted internal auditing certifications, and principal researcher and educator.

The IIA sets the bar for Internal Audit integrity and professionalism around the world with its 'International Professional Practices Framework' (IPPF), a collection of guidance that includes the 'International Standards for the Professional Practice of Internal Auditing' and the 'Code of Ethics'.

The IPPF provides a globally accepted rigorous basis for the operation of an Internal Audit function. Procedures for the mandatory provisions require public exposure and formal consideration of comments received from IIA members and non-members alike. The standards development process is supervised by an independent body, the IPPF Oversight Council of the IIA, which is appointed by the IIA–Global Board of Directors and comprises persons representing stakeholders such as boards, management, public and private sector auditors, regulators and government authorities, investors, international entities, and members specifically selected by the IIA–Global Board of Directors.

IIA–Australia ensures its members and the profession as a whole are well-represented with decision-makers and influencers, and is extensively represented on a number of global committees and prominent working groups in Australia and internationally.

The IIA was established in 1941 and now has more than 180,000 members from 190 countries with hundreds of local area Chapters. Generally, members work in internal auditing, risk management, governance, internal control, information technology audit, education, and security.

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