

## Steps in conducting an investigation

### Snapshot of the elements of any investigation:

<ol style="list-style-type: none"> <li>1. <b>Setting up of objectives and terms of reference</b></li> <li>2. <b>Planning the overall approach, method, and team for the investigation</b></li> <li>3. <b>Budgeting the cost of the investigation</b></li> <li>4. <b>Collection of evidence:</b> <ul style="list-style-type: none"> <li>- Direct Methods</li> <li>- Indirect methods</li> <li>- Use of experts such as handwriting evaluators, IT experts, etc</li> </ul> </li> </ol>
<ol style="list-style-type: none"> <li>5. <b>Evaluation of evidence</b></li> <li>6. <b>Brainstorming and Team discussions</b></li> <li>7. <b>Interviews for clarifications</b></li> <li>8. <b>Listing of suspects</b></li> <li>9. <b>Planning Interviews and confrontation of evidence collected</b></li> <li>10. <b>Listing out limiting conditions, constraints before commencing compilation of draft report</b></li> <li>11. <b>Team discussion of findings of the draft report</b></li> <li>12. <b>Tying up loose ends, completing unfinished inquiries and compilation of final report</b></li> <li>13. <b>Issue of final report and preservation of documents</b></li> </ol>

### Brief Explanatory note on the steps

#### 1. **Setting up of objectives and terms of reference.**

The most important element of any investigation is this. These are usually given by the Audit Committee to the Head of the internal audit or any other person whom it deems fit. The most common objectives would generally be to determine whether any allegation or suspicion of wrongdoing has merit. Such investigations are initiated based on a tip-off information, or an audit / MIS report, or a whistle blower's allegation, and need to determine the exact nature, quantum, magnitude of the fraud or financial crime or any wrongdoing affecting the company and the responsibility and accountability for such wrongdoing.

The objectives would also have to be *fine tuned* to consider whether the wrongdoing has to be eventually reported to an authority such as police, EOW, RBI, FEMA or the like and if so, it is essential, in such situations to seek legal clearance of the objectives and the deliverables

of the report. As a rule *it is always advisable* to seek inputs from the legal advisors to ensure that the report can be used for future litigation if and when necessary.

The objectives and terms of reference should be crystallised in a formal charter, approved by the Audit Committee consisting of independent directors, or any higher authority such as the Board.

The terms of reference must provide a clear mandate to investigate as also the authority to whom the report must be issued. While finalizing this, independence must be maintained to ensure that *no interested parties can access or influence* the investigation in any given case.

For the purpose of this note it is presumed that the investigation is assigned to the Head of Internal Audit (HOA) but it could be any person appointed by the Audit Committee.

## **2. Selection of the Investigation team and planning the overall approach, method for the investigation**

The HOA must explain the scenario and backdrop under which the investigation has been assigned to a selected team. The selection of the team is based on various factors such as the skill sets needed, experience, the budgeted cost and availability of resources.

The HOA must consult the team and together decide on an overall macro approach for conducting the investigation and this ideally must be documented through minutes of meetings.

## **3. Budgeting the cost of the investigation**

There is always a cost benefit ratio which needs to be evaluated for every investigation. An investigation can continue indefinitely unless a defined budget and timeline is set. This is best done by the HOA in consultation with the chairman of the audit committee and decisions need to be taken based on the nature of the crime suspected, the amount involved, the company's goodwill and reputation among other factors. It is important to remember that materiality, though important, does not necessarily take precedence in every case. For example if an investigation involves, say, an allegation of sexual offence against a lady employee of the company, then the very heinous nature of this wrongdoing needs to be established or disproved, irrespective of any financial impact. Similarly sale of confidential information which may not have resulted in any immediate financial loss is also a serious issue. In such cases higher budgets may be justified.

## **4. Collection of evidence:**

The HOA would prepare a detailed audit and investigation checklist (with inputs from every team member) of the records, documents, and employees and associates to be examined for the purposes of the investigation.

Every investigation necessarily seeks to collect evidence to substantiate the objectives. Essentially an investigation attempts to prove or disprove the allegations

or suspicions based on evidence collected or available through the following or any combination of these:

- *Direct Methods*

Direct methods include direct and upfront methods involving documentary checks and verifications, examination of records, data evaluation, data analysis and data mining, and also includes interviews of relevant staff, managers, and senior management as deemed essential.

Where necessary even computer or digital forensics may be useful and use of advanced file and data retrieval techniques where evidence destruction is suspected

- *Indirect methods*

Surveillance, field inspections, third party interviews, interviews of past / ex employees, associates, vendors, customers are all examples of indirect methods.

- *Use of experts* such as handwriting and cheque signature verifiers, IT experts, QC technicians, etc is recommended within the budgets available. The value of evidence from such experts is very high and very effective where the report may be used in a court of law or for legal police or for statutory purposes.

## 5. Evaluation of evidence

This is best done both at a micro and a macro level. Evidence must be examined by at least two or more senior members of the team before any further inquiry is made and also before any conclusion is drawn. This too must be documented with an evaluation note from the seniors who have evaluated the evidence.

## 6. Brainstorming and Team discussions

Even under auditing standards this is now mandatory. Teamwork is what investigation is all about. This eliminates bias and increases objectivity and accountability. The discussions must broadly cover the approach, work done, findings and first review conclusions. This too should be minuted and recorded. Once a consensus or a majority approval is reached on the first review conclusions and the way forward, a forward plan and a list of witnesses must be drawn up for final interviews.

## 7. Interviews for clarifications

Based on the first review conclusions the witnesses must be questioned in *presence of the HR head (recommended) and if approved by the legal advisors the interviews must be recorded and preserved for future use.*

## 8. Listing of suspects

Based on the first review reports and the interviews of witnesses a list of suspects must be drawn up for final confrontations. Ideally a dossier for each suspect must be prepared which must contain all information, queries, exhibits and data which has to be referred to in the interview. The chronology of the questions must be considered in tune with the objectives of the investigation.

**9. Planning Interviews and confrontation of evidence collected**

Once the dossiers for all suspects have been prepared, the order of the interviews and where needed joint interviews must be planned in advance for best results. These interviews must be held in well insulated conference rooms in presence of HR and legal department heads. These too may be ideally recorded if okayed by the legal advisors.

**10. Listing out limiting conditions, constraints before commencing compilation of draft report**

The final conclusions can now be drawn, but not before identifying what was not possible- such as unavailable files, records, staff, managers etc. A draft report must be prepared with due consideration of the limiting conditions. It is advisable to give the benefit of doubt to any accused rather than to take a serious view based on missing information.

**11. Team discussion of findings of the draft report.**

As mentioned constantly in this note, the views of all members must be obtained, and where necessary, documented on the findings. In fact the internal copy must have all the team members signing the report.

**12. Tying up loose ends, completing unfinished inquiries and compilation of final report**

If based on point 11 above, any further checks, or any other inquiry has to be made, then this must be taken up and completed in the same manner and eventually incorporated after team discussions on the findings therefrom.

**13. Issue of final report and preservation of documents**

The report must now be issued to the authority identified earlier.

## **Words of caution**

1. Confidentiality. At all times preservation of evidence, testimonies, and submissions must be confidential and with independent senior persons
2. Recordings must be taken in a manner approved by the legal advisors. However every attempt must be made to get this done.
3. During interviews the HR head must represent the accused or the witness to prevent any bias or browbeating, within reason.
4. Protection must be offered to employees willing to submit testimonies against fellow employees or senior employees.