



MANAGING RISK: BEST PRACTICE IN CONDUCTING INVESTIGATIONS IN THE UAE

STRUCTURING AND MANAGING INVESTIGATIONS

Whether internally or regulator-driven, investigations into criminal or other improper conduct by individuals or their companies can raise serious issues, having long-lasting impact on risk management, reputation and costs.

Delivering a thorough, carefully planned and credible investigation will minimize disruption to your business, will help you maintain control of the process and ultimately could help mitigate the risk of corporate criminal, civil or regulatory liability and the resultant sanctions.

Below are some practical guidelines to help you navigate the issues and challenges arising in each step of the investigation process.

CRISIS MANAGEMENT



Plan: Ensure you have a simple and easy to implement crisis management plan in place and that you have the right people in your crisis management team.



Test: Regularly test and train that team (both internal and external stakeholders, eg crisis communications agencies) on realistic scenarios that could impact your business. Do not rely on closely scripted responses in your plan for every scenario as they are all unique.



Evaluate: Assess the situation and coordinate your response.



Communicate: Consistent and appropriately timed messaging internally and externally may have a significant impact on risk and reputation.

FIRST RESPONSE



Control: Take control of the situation and try not to lose your internal investigation to a regulator or public prosecutor at an early stage.



Report internally: Report the fraud or improper conduct immediately to the CEO or to the Audit Committee or to the Non-Executive Members of the Board. Use discretion and common sense, especially if there is a chance that one or more members of management may be implicated.



Report externally: Consider whether you may need to report the matter to the police/prosecutor and/or make a Suspicious Transaction Report to the UAE Central Bank's Financial Intelligence Department.



Secure information: Ensure you have access to key witnesses, documents and data. Identify who is likely to have key facts to assess the situation and get access to information quickly. You may need to take physical possession of and image computers and other office equipment.



Consult: Consider appointing external legal, forensic and/or risk management consultants. External counsel adds credibility to the investigation, potentially preserves attorney-client privilege, and ensures that privacy, employee rights and technology concerns are carefully navigated.



Risk management: Start considering issues such as insurance coverage, exposure to corporate criminal liability, and reporting and disclosure obligations to regulatory authorities.

GATHERING AND PRESERVING DATA



Data privacy: Ensure your employment contracts and company/HR policies include appropriate employee consent to monitor, access, transfer and other wise process personal data.



Data collection: Comply with the requirements relating to any transfer of data. Don't compromise the evidence obtained, especially if it is to be used in another jurisdiction.

CONDUCTING EFFECTIVE INTERVIEWS



Plan: Plan and prepare your interview strategy carefully. Consider who should attend, and when, where and how the interview should take place.



PEACE: Remember that your ultimate goal is to get the most out of your witness. Use the best practice PEACE model of interviewing: **P**lan, **E**ngage, **A**ccount, **C**larify/**C**hallenge/**C**lose and **E**valuate.



Privilege: Consider the duty of confidentiality and privilege issues arising from information obtained from the employee. Consider whether legal advice and communications with your legal counsel may be protected by privilege.

INTERACTING WITH REGULATORS AND PROSECUTORS



Deadlines: Understand your reporting/disclosure obligations and the timelines for compliance, especially when dealing with multiple jurisdictions.



Cooperate: Cooperate, Cooperate, Cooperate! Be transparent when dealing with regulators.



Police or prosecutor: Know which will be most effective for your needs and who to approach among the prosecutor and the police if criminal actions arise during your investigation.



Criminal proceedings: If reporting a crime, agree with management on your approach taking into account the company's culture and the consequences on your investigation strategy.



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