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Too many stakeholders in the kitchen

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High-stakes corporate investigations into bribery, corruption, and other misconduct—whether focused on internal actors or third-party business partners—are often highly complex, require a broad range of investigative and functional expertise, and can involve multiple work streams running in parallel under crushing deadlines. Various internal and external teams are likely to play primary or supporting roles, and these roles may change over time, depending on a variety of factors, including in-process findings and the emergence of government regulators or law enforcement. When such a critical matter arises, the first impulse is often to throw resources at it and let every conceivable stakeholder play some role. However, this well-intentioned approach can often lead to a “too many cooks in the kitchen” situation, undercutting the efficiency and effectiveness of the entire investigative process.

As a result, identifying those roles and responsibilities, managing resources and timelines, and remaining nimble in the face of change can be critical to ensuring that a “bet the company” matter does not devolve into an all-out catastrophe. In fact, the Department of Justice has specifically addressed “Properly Scoped Investigations by Qualified Personnel” and “Investigative Respons[iveness]” in its most recent *Evaluation of Corporate Compliance Programs* guidance in April 2019,^[1] which considers the manner and structure in which investigations are handled.

Initiating the process

An investigation may be initiated in a number of ways, including by a tip (internal or external), an audit finding, or a call from outside law enforcement. When negative information arises that necessitates further investigation, proper staffing and a thorough but realistic work plan can be key to the inquiry's success.

Start with just the facts

The initial focus of the investigation should be on identifying what information should be collected and who should be doing the collecting. The investigative team should begin in fact-finding mode, looking at all relevant information surrounding the suspected complaint or misconduct, both incriminating and exculpatory. An effective investigator exercises measured diligence, critical analysis, and professional skepticism. Document holds are an effective investigative tool to preserve information and aid the initial fact-finding missions.

Keep good records

During the fact-finding stage, it is vital to be cognizant of how information is documented and preserved. All information collected should be viewed through the lens of it potentially appearing in a formal legal proceeding at some point in the future. Accordingly, it is paramount that the integrity of the information is maintained with

a clear chain of custody established, and the method by which it is gathered should be objectively reasonable and defensible.

Maintain confidentiality

It is also critical that information collected during the course of the investigation—as well as the identities of those it is collected from—remain confidential. Investigators should share information among team members with a “need to know” to avoid duplicative efforts or miscommunications, especially in fast-moving investigations with multiple tracks running in parallel. However, at the same time, the investigation team should be careful about what information needs to be shared with witnesses, corporate stakeholders, and even outside law enforcement while the investigation is still running its course.

Manage witnesses and whistleblowers

Witnesses often provide the core information or “the meat” of an investigation. Witnesses provide wide-ranging types of information from the proverbial “smoking gun” to information that provides color to a motive or context to information gathered that, at first glance, did not appear to fit within the scope of the investigation. It is the investigator’s job to exercise professional skepticism and diligence in order to ensure, through validation, that witness testimony can be supported.

Finally, witnesses may also include a whistleblower that notified the investigation team of fraudulent activity. Treatment of whistleblowers is an extremely sensitive issue and carries significant consequences if mishandled. The company and its employees need to be advised not to take any acts against a whistleblower that give even the appearance of retaliation.

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