



## Conducting a corporate internal investigation

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Illegal or unethical conduct can occur in any workplace, whether by employees or management.

Employees might steal money or trade secrets. Management may allow a bribe to be paid to secure a lucrative contract, or use accounting trickery to make finances appear more attractive. There are countless ways that a company and its staff can commit misdeeds.

If an organisation suspects that something is amiss, one of the first steps it should take is to investigate to determine the facts. Based on these facts, management can decide how to respond.

The investigation may exonerate an employee, or it may reveal a deep-rooted problem within the company that requires immediate attention and action. Investigations can also excise any wrongful conduct from the company, allowing it to weed out the bad apples, promote good organisational culture, limit legal liability and protect its reputation.

Another benefit of an internal investigation is that it can help the company prepare for any potential government action. It will be far better equipped to deal with inquiring regulators if the truth of the matter is already known. It's better for a company to find out something damaging first, instead of being told by a regulator. In most cases, the company will be able to prevent or reduce its exposure.

The main drawback to investigations is that they are time-consuming and often expensive. A company considering an investigation may be under significant time constraints or lack necessary expertise. To ease the resource burden, a company should begin each investigation with a carefully drafted plan.

When preparing the plan, a key issue to consider is the nature of the wrongdoing. The more serious the offence, the more extensive the investigation. Stealing a co-worker's lunch from the refrigerator should not warrant a full investigation. But something more onerous -- such as bribery or fraud -- almost always will.

Another important planning issue is the investigation's scope. Will the investigation look to turn over every rock from the last decade? Or will the scope be narrow, extending only to a particular action by a specific employee?

The scope will also depend on the wrongdoing. For bribery and fraud cases that may have occurred over longer periods of time, the scope would be more extensive than one-off instances of employee misconduct. In many cases, an investigation's scope may naturally widen as the search for facts proceeds.

Companies must also consider who will be assigned as the investigator. Ideally, the investigator should be viewed as someone who is independent and impartial; certainly, he or she should not be someone who reports to the person being investigated.

External counsel can be a good choice, especially in cases involving legal violations. External parties can examine a company objectively and will not be hampered by internal politics. Outside lawyers usually work in tandem with a company's in-house counsel to gain insights into the organisation's operations for an investigation.

Another critical aspect is identifying the witnesses to be interviewed and gathering relevant evidence. This is an ongoing process. As more facts are uncovered, more witness names often appear. Investigators will have to meticulously compile and study all forms of evidence.

The investigator should carefully document each step of the process to create a permanent record of what is being discovered, how the information is being uncovered, and who is revealing what. The result is compiled into a detailed written report, which can then be used as evidence to discipline an employee, build a legal case, make disclosures to shareholders, or address systemic shortcomings, among other things.

A central component of the investigation is the witness interviews, which should be done after all relevant documents have been compiled and thoroughly reviewed. Without preparation, the interviews will be ineffective. Just as important as the interview is the written interview report. Often, memories are not reliable, so the reports serve as the written record of each interview. And when the reports are examined in conjunction with each other, the facts often become clearer.

Part of the art of witness interviews involves understanding cultural nuances. This is especially important in cross-border investigations, where an overseas parent company (or law firm) investigates conduct in a Thai subsidiary, for example. The foreign entity will likely not understand issues unique to Thailand, such as local labour and employment laws, privacy matters, and of course language.

Understanding Thai culture and how to communicate and question employees will also yield much more effective interview results. For these reasons, it is always recommended that local experts assist foreign parties when conducting cross-border investigations.

Investigations are a critical component of how a company uncovers wrongdoing. They can not only help eliminate wrongful behaviour, but also show employees that the organisation takes misconduct seriously.

What is more, with an investigation a company can show the public at large that it will resolutely and earnestly address allegations of misconduct. This can help the organisation distance itself from the bad act.

More importantly, investigations encourage a culture of transparency and accountability, which not only limits liability but is ultimately beneficial for a business's long-term reputation and success.

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