Elements of an Effective Internal Investigation and Corrective Action Plan

Why is this important?

If a company discovers a problem – through monitoring, auditing, from a whistleblower or by any other means – it should address it immediately with a risk-based approach. The purpose should be to find out what actually happened, to determine the root cause of the incident, and to report to senior management so the company can take appropriate steps to prevent or mitigate the harm. These steps may include disciplining, sanctioning or terminating employees (consistent with local law); terminating contracts with third parties; withdrawing from projects; etc. You should also consider whether system improvements, changes in current processes as well as additional education and awareness should be made to prevent future similar conduct from occurring. Maintaining a tracking system is useful for managing corrective actions.

What considerations should be in mind before starting an investigation?

The first step is to do a preliminary review of the matter and formulate an investigation plan if the preliminary review reveals a fact-based reason to continue. This can be done using internal or external resources. The skills and experience of the team is another important consideration. Often, the investigative team will need expertise from legal, compliance, IT, finance, internal audit and other functional business units.

Once the team is in place, you should ensure the investigation is thorough and well-documented, paying attention to any applicable legal requirements or restrictions. Confidentiality is an important consideration and you should limit who has access to the investigation and its findings, and respect confidentiality to the extent possible. If your source is an anonymous whistleblower, that creates special considerations as well. It is also crucial to protect persons who report from retaliation.

After the investigation is complete, you should take appropriate action to discipline or sanction individuals involved in the violation and to correct the system so that future, similar violations do not occur.

What are the hallmarks of an effective corrective action system?

In general, there are three key characteristics:
- A corrective action system based on root-cause analysis is fully implemented.
- Appropriate sanctions for misconduct consistent with local labor laws are promptly and consistently applied, and are strong enough to serve as deterrents.
- With the support of senior management, the anticorruption compliance team drives continual process improvement, creating annual improvement plans.

Following is an outline of an investigation and corrective action tracking system that can be adapted to fit your individual needs.

Investigation Plan

1. Assess the allegation:
   - The source, credibility, and charges.
   - Determine if an investigation is necessary.

2. Assign investigator(s):
   - Internal audit, compliance function, legal counsel (either internal or external).
   - Determine if you need forensic experts.
   - Ensure they have the proper skill set, including interviewing skills.

3. Prepare before the investigation:
   - Determine the scope of the investigation.
   - Determine the method(s) of information gathering.
   - Determine any documents necessary to support the investigation.
   - Determine who will be interviewed.
   - Prepare a schedule and interview questions.
   - Determine to what extent you can and how you will keep information confidential.
   - Determine who else (in addition to the investigatory team) will be involved/Identify the "need to know" team.

4. Consider how to preserve the attorney-client privilege (if relevant in your jurisdiction).

5. Conduct the investigation.
   - Create a chronology of facts.
   - Stay organized and make the best use of documents.
   - Develop conclusions and draft a report.

6. Get appropriate approval for action (sanctions/discipline and corrective action to the system).

7. Report back to the whistleblower that action has been taken.

8. Protect persons from retaliation.

Other Considerations

- Ensure the violation stops.
  - Is the violation continuing? If so, stop it.
  - Check other geographies where you operate, not just the one with the current violation to ensure the violation is not wide-spread.
  - Give additional scrutiny to similar deals or people in the current geography and in other geographies.

- Know Your Business
  - Look for red flags.
    - *e.g., your largest and most capable reseller has increased its use of subcontractors for tasks you know it can perform itself, that is a red flag*

- o Enlist trusted colleagues to help understand nuanced business areas.

- Individuals
  - o Examine personal relationships.
    - What if the employees making the violations are senior, top revenue-makers or you have close personal relationships with them?
  - o Pre-determine the ramifications of discipline/termination (or doing nothing) depending on culpability and findings.

After the Investigation: Corrective Actions & Ongoing Monitoring

- Discipline/sanction wrongdoers.

- Take corrective action to the system.
  - o Uncover the root-cause of the violation – resist the temptation to make a "quick fix."
  - o Assign an owner with timelines for any corrective action you will take.
  - o Report to senior management and get approvals for action.
  - o Correct gaps and make system improvements.
    - Enhance policies, procedures, controls
    - Enhance training

- Ongoing Monitoring
  - o Focus on:
    - Review of policies, procedures and controls
    - Review of books and records
    - Review/monitor third parties
    - Testing for program compliance across all categories
    - Testing transactions
    - Review of external developments

- Constant Compliance/Continual Improvement
  - o Know your unique risks as a company.
  - o Regularly update policies, procedures and controls based on risk.
  - o Train your employees and third parties, as necessary.
  - o Regularly communicate to emphasize the importance to employees and third parties.
  - o Know your business (the details).
  - o Spot red flags.
  - o Detect, resolve, remediate (repeat).