This presentation will generally cover the key elements for successful civil fraud recoveries, with particular emphasis on bribery and corruption, by highlighting the vital steps, procedures, and techniques for a successful and cost-effective outcome for your organization or client. It will also provide practical answers to fundamental questions, such as: “What evidence will be most persuasive?”; “How can I best obtain it?”; “How can I generally minimize the risk of expensive litigation and avoid costly mistakes?”; and “How should I conduct this investigation to maximize—for my organization or client—the likelihood of a successful recovery of all losses suffered and incurred?”

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Partner
Fraud Investigation & Disputes Services
Ernst & Young
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Key investigative techniques are vital to the investigation of fraud or corruption or any alleged event. The outcome will be dictated by the thoroughness in applying an effective investigation process containing key techniques or avenues of inquiry.

The following bullets are two examples of definitions of an investigation. The last definition in the list below is typical of many police or law enforcement organizations. Even though they include “in the interests of justice,” this is not necessarily the case in civil investigations. In civil investigations, the focus is on finding the facts that indicate the true circumstances of what has occurred.

- “A search for evidence connecting or tending to connect a person with conduct that infringes the criminal law or the policies and standards set by the affected organisation.” [Source: Australian Standard AS 8001-2008 Fraud and Corruption Control, p.16]
- “A search for the truth, in the interests of justice and in accordance with the specifications of the law.” [Source: La Trobe University’s Graduate Certificate in Fraud Investigation course notes, 2010]

The following captures many of the reasons why to investigate allegations, suspicions, or reports of fraud or corruption.

- To determine the full extent (to determine the truth)
- To deter the perpetrator (punishment/action) and deter others
- To secure financial recoveries and/or minimize damage
- Good governance practices, legislation, the “right thing to do”
- *To apply lessons learned to internal control improvements*
KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

What potentially do you, or your client, intend to do with the results? This will influence the type of investigation and if proof is required to be obtained at the high level for a criminal prosecution, or only at the lesser level of proof on the balance of probabilities for civil or workplace investigations. The following are many of the potential results that may be sought by organizations.

- Disciplinary action (warning to dismissal from employment)
- Voluntary return of assets/funds from fraudster
- Fidelity insurance claim (if a policy exists)
- Civil litigation
- Criminal prosecution

For information to become evidence, a process is applied to the information. This is depicted in the graphic below. Firstly information is obtained that the investigator believes might be relevant to the purpose or reason for the investigation. If the information is assessed as relevant and admissible, it can become evidence if it is subject to a person providing testimony in a court of law or tribunal that can determine its admissibility and admits the testimony and/or information, data, and so on as evidence.

![Diagram of evidence process]

**Validation procedures:**
Analysis, investigation (all information avenues), identification of witnesses, etc.

**Testimony given in court:**
Relevance and reliability
The principles of natural justice and procedural fairness are essential to keep in mind and practice when an investigation is being conducted. These apply and may differ globally but will always be relevant. For example, there is absolutely no point in gathering information unfairly or against the law. An investigator must of course act with integrity and comply with the law at all times, as well as it being a waste of time to gather information that the investigator knows is likely to be inadmissible in a court of law and therefore potentially irrelevant to the investigation. The following are some of the more common principles to which investigators need to adhere.

- Voluntary participation/by informed consent
- Being impartial, fair, or having an absence of bias (e.g., no conflicts of interest—actual or perceived—not being closed-minded)
- Make inquiries with all relevant parties
- Conduct the investigation without undue delay
- Make reasonable inquiries or investigations before making findings
- Innocent until proven otherwise, right to silence
- Give a person(s) of interest a reasonable opportunity to put their case/respond to all allegations to explain his/her version of events

How Should We Conduct Investigations?
The following diagram re-produced below (and also provided as a separate document for the reader to access) is a guide to how investigations should be conducted to maximize your chances of an effective investigation and taking full advantage of key investigative techniques.
1. Capturing the Chatter

Structures including people, processes, and technology should be embedded to help identify potential fraud and corruption by capturing the following:

- Chatter
- Audit program findings
- Hotline reports
- Exit interviews
- Internal control violations
- Fraud/corruption, culture, or ethics surveys

To exemplify how important the “chatter” is to an investigation, refer to the Association of Certified Fraud Examiners’ (ACFE) 2012 Report to the Nations concerning the initial detection of occupational abuses in which tips (or informants/whistleblowers) were the main method.
KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

Initial Detection of Occupational Frauds

<table>
<thead>
<tr>
<th>Detection Method</th>
<th>Percent of Cases 2012</th>
<th>Percent of Cases 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tip</td>
<td>43.3%</td>
<td>40.2%</td>
</tr>
<tr>
<td>Management Review</td>
<td>14.6%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Internal Audit</td>
<td>14.4%</td>
<td>13.9%</td>
</tr>
<tr>
<td>By Accident</td>
<td>7.0%</td>
<td>8.3%</td>
</tr>
<tr>
<td>Account Reconciliation</td>
<td>4.8%</td>
<td>6.1%</td>
</tr>
<tr>
<td>Document Examination</td>
<td>4.1%</td>
<td>6.2%</td>
</tr>
<tr>
<td>External Audit</td>
<td>3.3%</td>
<td>4.6%</td>
</tr>
<tr>
<td>Notified by Police</td>
<td>3.0%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Surveillance/Monitoring</td>
<td>1.9%</td>
<td>2.6%</td>
</tr>
<tr>
<td>Confession</td>
<td>1.5%</td>
<td>1.0%</td>
</tr>
<tr>
<td>IT Controls</td>
<td>1.1%</td>
<td>0.8%</td>
</tr>
<tr>
<td>Other</td>
<td>1.1%</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

Source: Association of Certified Fraud Examiners, 2012 Global Fraud Study

Source of Tips

<table>
<thead>
<tr>
<th>Source of Tips</th>
<th>Percent of Tips</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee</td>
<td>50.9%</td>
</tr>
<tr>
<td>Customer</td>
<td>22.1%</td>
</tr>
<tr>
<td>Anonymous</td>
<td>12.4%</td>
</tr>
<tr>
<td>Other</td>
<td>11.6%</td>
</tr>
<tr>
<td>Vendor</td>
<td>9.0%</td>
</tr>
<tr>
<td>Shareholder/Owner</td>
<td>2.3%</td>
</tr>
<tr>
<td>Competitor</td>
<td>1.5%</td>
</tr>
</tbody>
</table>

Source: Association of Certified Fraud Examiners, 2012 Global Fraud Study
### KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

<table>
<thead>
<tr>
<th>2. Filtering</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is important to filter the “chatter” that has been received and that has commenced the process to assess the need for an investigation. The following are some of the major considerations:</td>
<td></td>
</tr>
<tr>
<td>Filtering helps management focus on what matters most, and commencing the “triage” or “tier” approach for prioritizing matters based on potential consequences</td>
<td></td>
</tr>
<tr>
<td>Competence and independence</td>
<td></td>
</tr>
<tr>
<td>• Management decision making</td>
<td></td>
</tr>
<tr>
<td>• Investigators—internal and/or external</td>
<td></td>
</tr>
<tr>
<td>Legal privilege through a lawyer</td>
<td></td>
</tr>
<tr>
<td>• Should this be privileged?</td>
<td></td>
</tr>
<tr>
<td>• Should privilege be waived?</td>
<td></td>
</tr>
</tbody>
</table>

Regarding investigator competence, in a number of locations globally it is a legal requirement for private investigators (including CFEs) to be licensed by a local regulatory authority. Each location may have different requirements in this regard and these should be known prior to investigations or fraud examinations being conducted and an applicable license obtained. Here are some examples of the presenter’s investigator’s licenses from Australia!
This point was raised recently in an article by J. Peet in *Fraud Magazine* with an extract below. This extract shows where private investigator licenses are required in the United States and Canada.

3. **Plan and Assign**

A tier or triage approach should be applied to a matter requiring investigation. This should be based on potential consequences and it helps the organization determine the most appropriate resources and approach to each investigation. Some considerations are as follows:

- **Crisis Issues**—could sink the entity, as could allegations against senior management (should involve the Board and the Audit Committee reliant on confidentiality).

- **Significant Issues**—are serious and material but not tier 1 (should involve senior management typically directing the investigation).

- **Serious Issue But Prepared**—are expected (e.g., theft) with systems designed and investigative staff trained.

- **Line Management/HR Level Issue**—these are often HR related and warrant the attention of management (but can escalate).

In essence, this is the response to a trigger event, which then involves applying the tier or triage approach, with the resulting investigative response leading to resolution and remediation.

### Incident Response Plan:

- **Trigger Event**
- **Triage**
- **Response**
- **Remediation**

4. **Investigate**

In conducting the investigation to secure and gather evidence, the following considerations are relevant:

- Investigation planning (also, restrict information to a need-to-know basis)
- The importance of the first 48 hours, including:
KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

- Access control/suspension/withdrawal of all access rights of the person(s) of interest to premises and computer and other systems, authorities, and communication with other employees
- If the person of interest continues at work, closely supervise
  - Securing and gathering evidence
  - Preserving and collecting data
  - Chain of custody

Key avenues of inquiry include:
- An organization’s data, records, policies, and procedures
- Information from informants and whistleblowers
- Search of relevant workplace areas
- Examination of exhibits, data, and systems
  - Forensic accounting
  - Forensic technology (computer forensics, forensic data analytics, mobile devices forensics)
  - Forensic investigation
- Interviewing witnesses and third parties
- Open source or public data (e.g., Facebook, assets, etc.)
- Surveillance
- Interview of person(s) of interest
- Profiling (motive, opportunity, rationalization)

Due to the nature of bribery and corruption often being off-book transactions, this area is one of the most difficult to investigate. The following are some avenues to consider:
- Mobile device forensics
- Open source or public data (e.g. Facebook, LinkedIn, Google, Skype, etc.)
- Forensic data analytics / fraud triangle (refer to *The Fraud Examiner*, April 2012, ACFE, of the a video clip from Ernst & Young’s Vincent Walden, www.acfe.com/fraud-examiner.aspx?id=4294972669 )
A key avenue of investigative inquiry is obtaining data (often electronically) in a manner that has evidential integrity and is in compliance with a process (such as the electronic discovery process below) to enable processing and production of relevant investigation results.
Mobile device forensics is becoming more and more important as the increase in the purchase and use of mobile devices has escalated massively in recent time. Considering the first cellular network in the world was built in 1977 in Chicago, the statistics below show the prevalence of, and daily applications in our lives of, mobile devices.
Types of mobile devices include the following:

- Cellular phone (GSM & CDMA)
- Global positioning system (GPS)
- Tablets (iPad, Galaxy)
- Portable media player (PMP)
- Other flash memory devices
### KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

The sort of information that can be gathered from mobile devices includes the following:

- Email
- Call history
- Images
- Passwords
- Websites
- Dates and times
- Interests
- SMS text
- Internet history
- Video
- Blogs
- Social networks
- Communications
- Feelings

The following are some tips in preserving electronic data to maximize its evidence integrity:

- Will the computer(s) possibly provide evidence to support an investigation?
- Do NOT turn the computer(s) on.
- Do NOT interfere with any process if the computer is operating (this includes looking for or viewing files).
- Do NOT look for evidence on the computer yourself.
- Do NOT let any suspected person touch the computer(s).
- Do LOOK for additional computers and mobile devices.
- Do LOOK for additional data sources, such as floppy disks, backups, written down passwords, USB keys.
- Do STORE the computer(s) in a physically secure location until a forensic examiner arrives.

Every fraud or corruption incident will involve a person or persons. An effective interview is essential and the
investigator often only gets one chance to elicit relevant information from witnesses and person(s) of interest. The following are some relevant points:

- The nature of deception: the flight or fight response
- Standard (structured interviewing) and advanced techniques (e.g., SCAN, ‘Scientific Content Analysis’)
- Non-verbal behavior and body language (however, analysis in context!)
  - 80 percent of all communication is non-verbal
- Difference in interviewing a witness vs. a person of interest

5. Resolution
It is important to come to a resolution, remediate the situation, recover damages, and prevent reoccurrence. The following points are relevant to the resolution stage of the investigation process:

- Know when to say when—ceasing the investigation
- Discipline action
- Remediation to improve the system for future prevention
- Restitution
- Disclosure—who needs to be informed?
  - Within the organization (employees, execs./mgmt., the Board, Audit and Risk Committees, shareholders)
  - Suppliers? Customers?
  - Police or other law enforcement?
  - Government and regulators?
  - Fidelity insurer?
  - Media as necessary

How to Recover the Losses Due to Fraud

- Voluntary return of loss of funds—ask the fraudster
- Fidelity insurance claim
KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

- Civil litigation for recovery through the legal system (e.g., claim against fraudster’s assets)
- Recover through relevant confiscation or similar local legislation (e.g., confiscation of profits of crime)
- Law enforcement, police, regulatory authority criminal prosecution or civil action

Refer to the ACFE’s 2012 *Report to the Nations* statistics on the recovery of fraud losses by victim organizations.

**NOTES**

- Funnel too narrow
- Big brother culture
- Missing the big ones
- Making everything a big issue
- Assigning to the wrong group
- Cherry-picking by top executives

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**Recovery of Victim Organization’s Losses**

<table>
<thead>
<tr>
<th>Percent of Loss Recovered</th>
<th>2012</th>
<th>2010</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Recovery</td>
<td>48.7%</td>
<td>47.7%</td>
<td></td>
</tr>
<tr>
<td>1 – 25%</td>
<td>15.0%</td>
<td>15.4%</td>
<td>16.6%</td>
</tr>
<tr>
<td>26 – 50%</td>
<td>8.1%</td>
<td>9.1%</td>
<td>9.9%</td>
</tr>
<tr>
<td>51 – 75%</td>
<td>5.5%</td>
<td>6.7%</td>
<td>5.3%</td>
</tr>
<tr>
<td>76 – 99%</td>
<td>6.9%</td>
<td>6.4%</td>
<td>5.9%</td>
</tr>
<tr>
<td>100%</td>
<td>15.8%</td>
<td>14.8%</td>
<td>20.1%</td>
</tr>
</tbody>
</table>

Percent of Cases

Source: Association of Certified Fraud Examiners, 2012 Global Fraud Study
KEY INVESTIGATIVE TECHNIQUES FOR SUCCESSFUL RECOVERIES

- Superficial investigation
- Digging too deep
- Trampling on evidence
- The first 48 hours

REFERENCES

- La Trobe University, Graduate Certificate in Fraud Investigation course notes, Melbourne, Australia: 2010.