

REVENUE PROTECTION THROUGH INVESTIGATIONS

Background

▪Investigations in the Corporate environment including government departments consists of the following domains:

- ❖Criminal;
- ❖Civil;
- ❖Disciplinary; and
- ❖Administrative processes.

▪Each domain should actively be utilised to maximise revenue protection within the legal framework of a specific country.

Criminal Investigations

▪The objective of criminal investigations in the Corporate environment should be to:

- ❖Establish criminality;
- ❖Prosecute criminality;
- ❖Identify control violations;
- ❖Recommend the strengthening of violated controls; and
- ❖Recover losses.

▪In the event of a criminal prosecution, the burden of proof lies with the state and it should be proved beyond a reasonable doubt.

▪The 51% Rule is applied.

- When a successful prosecution has been secured by the State, an application can be made by the client to the specific Court to authorise a Court order in terms of Section 300 of the Criminal Procedure Act 51 of 1977.

- This order allows the disadvantaged party to recover any amount not exceeding R500 000.00 (Five Hundred Thousand Rand).

- When this process has been utilised, the asset forfeiture process cannot be effected.

Civil Investigations

The civil aspect of investigations is solely based on the recovery of losses suffered by the company or a specific government department from either internal or external parties involved. Multiple recovery avenues exist which includes the following:

-Asset forfeiture

Only proceeds proved to have been derived from criminal action can be recovered.

-Acknowledgement of debt

Is a pro-active solution reached between the debtor and creditor, the supplier of services or goods and the client in which agreement the client acknowledged the outstanding debt and undertakes to honour such debt according to the acknowledgment of debt.

-Default judgment

After a debtor is in breach of his acknowledgement of debt, an application for default judgment can be made to the relevant court.

On a successful application a warrant of execution can be issued to attach the goods up to the outstanding value; or
A garnishee order or emoluments attachment order can be applied for to deduct the outstanding money directly from the debtor's salary.

Disciplinary measures

Mostly relates to internal corrective action but does not exclude the recommendation to recover losses from employees. The following avenues can be explored to recover losses due to misconduct:

- Recovery from Pension Fund in terms of section 37 of the Pensions Fund Act 24 of 1956.
- The investigation report should reflect the misconduct, the root cause of loss and control violations.
- The recommendations should not only include appropriate corrective action but also specify **HOW** the loss should be recovered.
- Internal policies and procedures should specify the percentage recoverable from an employee due to negligence, e.g your vehicle or fleet management policy.

Administrative Processes

It deals with the deterrent effect of an investigation including corrective measures such as policies, processes and systems. Once corrective measures have been breached, the re-active process of an investigation starts to determine the extent of the control violation and the route course for the misconduct or non-compliance.

Preventative Measures

- Policies, processes and systems are the cheapest control measure to protect a company or government departments revenue.

Insurance Claims

- Recovery of losses during the administrative process includes the processing of a claim, which claim is substantiated by an investigation report.
- Recovery of losses from insurance can include recoveries from own insurance or via the insurance of a service provider to the company.

Recommendations

Investigations should be used as a tool to quantify losses which include:

- Reviewing financial records of clients/suspects;
- Asset tracing;
- Determining proprietary or non-proprietary prejudice and securing documentary evidence to support your claim to recover losses suffered.