

How to Assess Work by Fraud Examiners: Evaluation Criteria for Private Internal Investigations

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Abstract

Fraud examiners from law firms and auditing firms are often hired by private and public organizations when there is suspicion of misconduct and crime. The work by fraud examiners typically end in reports of investigations. This article addresses the issue of how to assess private internal investigations by fraud examiners. A number of criteria are presented, and a maturity model for internal investigation assessment is introduced. Evaluation is important, since client organizations spend substantial amounts of money without being sure whether the investment is profitable or not.

Keywords: Private investigation; financial crime; evaluation criteria; maturity model.

Introduction

Private enterprises and public agencies hire fraud examiners to conduct internal investigations when there is suspicion of financial crime by white-collar offenders. Fraud examiners from law firms and auditing firms are hired to reconstruct past events and sequences of events to study possible misconduct and crime. Private internal investigations are a growing business.

However, there are many problematic issues related to private investigations. Lack of integrity and lack of objectivity as well as lack of accountability stand out as key problems in fraud examinations (Brooks and Button, 2011; Button et al., 2007; Gottschalk, 2016; Lewis et al., 2014; Schneider, 2006; Williams, 2005, 2014).

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For example, Gottschalk (2016) discusses the case of a fraud examination carried out by an inspector general from the United States in Bangladesh. The evaluation identified a number of shortcomings and integrity violations in the investigation. One of the integrity violations is concerned with roles, where the investigator attempts to take on the roles of police, prosecutor as well as judge. This is far beyond the task of reconstructing the past.

This article addresses the issue of assessing work by fraud examiners by presenting evaluation criteria for private internal investigations into white-collar crime suspicion. When clients often spend hundreds and sometimes millions of dollars on fraud examiners, they need to be aware of expectations that should be communicated to investigators before signing the contract. While many investigators are professionals, they work in a business sector that is largely unregulated. Examples of investigations in countries such as the United States (e.g., Valukas, 2010, 2014) and Norway (e.g., Deloitte, 2016) illustrate that criteria to assess the work is needed.

Investigation Evaluation

Evaluation is the systematic inquiry into a completed investigation involving data collection, analysis, and assessment of work carried out in completed investigation work. It is an objective assessment of activities. Evaluations are always carried out subsequently. It is all about to describe and assess activities that have taken place. The assessment involves that the evaluator appreciates findings resulting from data analysis based on specific criteria. The assessment can be done by comparing the findings with an ideal or goal, such as the mandate and the problem formulation, as well as with criteria for good investigative practice. It should be considered whether the investigation has been successful in finding the truth and clarify the facts. It should also be considered whether the investigation has been going on in a professional manner. Furthermore, it should be considered whether the investigation has added value in terms of benefits exceeding costs.

An evaluation should meet certain quality requirements, such as openness about sources, triangulation of information (confirmed by several sources), documentation and conclusion. The design

(starting point), implementation (work process), conclusions (work result), workload (resource consumption) as well as investigation impact (consequences) should become subject to evaluation.

Evaluation is about judging the conducted investigation. An evaluator has to ask the critical question of whether or not the investigation was useless and worthless, and whether the investigation was improper and unprofessional. An evaluator has to ask whether the investigation was biased as a commission. These are some characteristics of an evaluation:

- Evaluation is a systematic study of work done or work in progress.
- Evaluation is an objective assessment of activities.
- Evaluation implies assessing or estimating the value of something.
- Evaluation involves analyzing to determine if the investigation did what it was intended to do and if the investigation had expected impact.
- Evaluation is a planned process where the goal is to develop knowledge that is sufficient to judge a completed fraud examination.
- Evaluation applies predefined and explicit criteria.
- Evaluation follows in the aftermath of activities.
- Evaluation can be formative versus summative, goal-oriented versus process-oriented, self-performed versus stranger-performed, etc.

It is certainly interesting to study the quality of investigations and investigation results. The solving of cases – meaning that examiners really found out what had happened and were able to document it – is an interesting issue to study. The extent to which witnessing evidence supports answers varies greatly depending on methodology, experience and personal qualities including thinking styles among private investigators. One hypothesis might be that many of the investigations could have resulted in a completely different outcome with another and perhaps more qualitative investigation method based on advanced styles of thought. Some investigations seem to be carried out almost as a judicial process with witnesses similar to a main hearing in court. Often, a lot of documents are reviewed without any clear purpose of evidence

production. Such a process is not at all suitable for solving most internal investigation cases. There are rarely new facts appearing during the main hearing in a criminal court case. It is the professionally qualified investigation that has brought forward facts and evidence that eventually may be presented to a court.

Evaluation Criteria

An evaluator must make a clear distinction between evaluation criteria and evaluation, for which criteria apply. An evaluation starts by developing criteria for evaluation of the work performed, where both general criteria concerning private internal investigations as well as specific criteria concerning this particular situation are introduced.

Colloquially, the term evaluation is used to describe assessment and estimation of the value of something. In the literature, an evaluation is a systematic process, it is planned and purposeful, and the purpose is to develop knowledge for assessment. To evaluate is to describe and assess. The description occurs within a framework that specifies procedures for data collection, analysis and drawing conclusions from the data. The assessment involves appreciating findings from data analysis based on predefined criteria.

An evaluation is both about goal and process. Measuring goal achievement is an inquiry into whether or not one or more objectives have been reached. Goals are defined in the investigation mandate and in expectations from stakeholders. Measuring process performance is a matter of assessing activities that have been carried out from start to finish. The process involves, among others, honesty, openness, integrity, professionalism, responsibility and accountability.

The typical overall purpose of evaluation of an investigation is to find out whether the project was successful.

Evaluation of an investigation is concerned with application of many of the same sources of information and methods that were used in the investigation itself. For example, informants for investigators may also be useful for evaluators.

Typically, evaluation of internal investigation reports will apply criteria such as:

- Empirical evidence due to forensic analysis that indeed points to a certain person/group within the company.

- Organization of investigative process with level of detailed description of every step.
- Extent of unbiased conclusions at every point of investigation.
- Extent of clearly stated goals.
- Extent of strong methodology that is stated in detail.
- Statement of conclusions: detail in explanation of how they came to that conclusion.
- Lack of ambiguity in contract and mandate.
- Results in line with mandate.
- Proof of findings.
- Thoroughness in documentation of actions taken during investigation.
- Identifying potential conflicts of interest (i.e., does mandate restrict investigation from pursuing leads?).
- Sources: how many different sources did investigators use to evaluate the same information? How many different types of sources (letters, interviews, financial statements, etc.).
- Evidence of preconception: does the report contain clues to the fact that the investigator had a specific theory or end-result in mind when he/she started the investigation?
- Extent of independence between data gathering and data analysis, or different groups doing both.
- Extent to which investigators were building up a solid case where previous history of that specific company is detailed.
- Ability to link all suspected individuals from the past with the current ones.

An evaluation of internal investigations will typically emphasize the starting point, the work process, the process result, the resource consumption, the investigation mandate, the investigative strategies, the work frame, the follow-up actions, and the social responsibility.

- *The starting point.* How well and suited was the starting point for the investigation? Was the mandate clearly articulated? Was the mandate focused rather than diffuse? The mandate was appropriate to clarify the matter? Were activities in the investigation clearly defined in the mandate? Were targets of the investigation clearly defined in the mandate or elsewhere? How might the starting point have been improved? Was there anyone who had a hidden agenda? Was the assignment rooted

in a dynamic principal, who was willing and ready to take the consequences of the investigation?

- *The work process.* How well was the investigation conducted? How well did the chosen strategies work: information strategy, knowledge strategy, methodology strategy, configuration strategy and system strategy? How well was contradiction safeguarded and self-incrimination avoided? How might the work process have been improved? Was impartiality considered and avoided? Was confidentiality handled in a proper manner? Have investigators received confidential information and handled it accordingly?
- *The process result.* What is the quality of results from the investigation? Is there any news in the investigation report? Did investigators discover what had actually happened? Who had done what and how and why? Did investigators answer all questions? Is everything in the mandate performed? Are all targets in the mandate reached? Is the investigation report understandable and useful to the principal? Are mentioned persons in agreement with presentations of themselves in the report? How might work results become even better? Are recommendations from the investigation possible to implement? Are recommendations followed up? Did the investigation have consequences for something or someone? What value can be assigned to this investigation? What effects did this investigation have? How successful was the investigation project? Does the investigation report contain errors and inaccuracies? Does the investigation report contain discussion of possible crime matters for which the suspect was never charged? To increase the credibility and transparency of an investigation report, it is important to describe explicitly the choice of methods and procedures, is it done? Credibility is created when a different investigators is able to arrive at the same result when following the same procedure with the same documentation – is this possible with the current investigation report?
- *The resource consumption.* How big was the consumption of resources by the investigation? Was the project kept within agreed cost limit and time frame? Were relevant skills used in the investigation? Resource is a term that implies making

something possible. A resource is an enabler. What resources were applied in the form of knowledge? What resources should have been applied in the form of knowledge? How might the consumption of resources have been reduced?

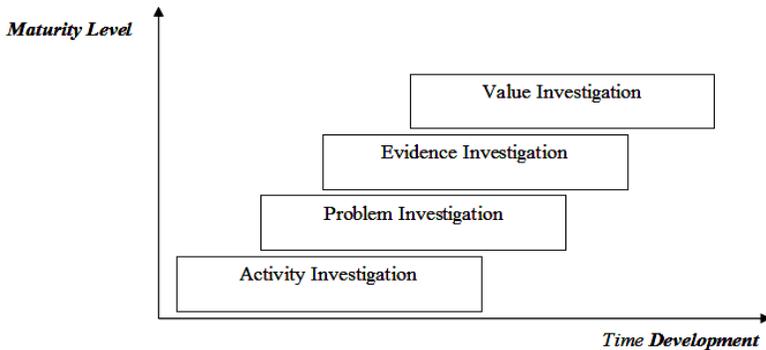
- *The investigation mandate.* Does the mandate seem suitable for the situation without any traces of bias or blame game? Is the mandate formulation clear, understandable, focused, and verifiable? Does the client seem really interested in the investigation and eager to learn about results? Are tasks in the investigation carried out in line with the mandate? Have all questions and issues in the mandate been answered?
- *The investigative strategies.* Did investigators select appropriate information strategy, knowledge strategy, methodology strategy, configuration strategy, and systems strategy?
- *The work frame.* Have investigators enjoyed a reasonable work frame in the client organization? Have issues such as the right of contradiction, the protection against self-incrimination and written proceedings been addressed?
- *The follow-up actions.* Has the client followed up on conclusions presented in the investigation report? Why or why not? Did the investigation result in relevant consequences for activities and people?
- *The social responsibility.* Do investigators take on social responsibility? Social responsibility is to share information with authorities, to compensate for own adverse effects (e.g., accused someone of something which later turned out to be wrong), to compensate for the client's adverse effects (e.g., such as baseless suspicions), to show transparent operations (which others can gain insights into), and to demonstrate professionalism (accountability, objectivity, and integrity).

Maturity Model

An internal private investigation can be evaluated by application of the following maturity model. A maturity model represents theorizing about how the investigation could be improved through a management-controlled or random development. A model has the same function as a theory, because the model provides a simplified picture of reality. The steps, stages or levels of the model are: (1) sequential in nature; (2) growing in a

hierarchical progression that is difficult or impossible to reverse; and (3) involving a wide range of organizational activities and structures.

The figure illustrates a potential maturity model for private investigations consisting of four stages, steps or levels.



Maturity model for internal private investigations

Level 1 Activity Investigation is focused on activities that may have been performed in a reprehensible way. Examiners are looking for activities in past events and prepare a reconstruction of sequences of events. Thereafter, examiners form an opinion about the activities in terms of whether or not they are reprehensible. At level 1, there are often auditors and others with accounting and financial transaction knowledge that examine and assess activities in terms of management of assets. An investigation at level 1 is usually passive, fruitless and characterized by unnecessary use of resources, for example because examiners tend to dig into too many details. At this lowest level, investigators attempt to find answers to the question: *What happened?*

Level 2 Problem Investigation is focused on problems and issues that must be solved and clarified. Examiners are looking for answers. When answers are found, the investigation is terminated. It is important to minimize the use of resources in an investigation, which should take the shortest possible time for involved persons. The appraisal and management is essential for success. The client was faced with an unresolved problem, and the client defines premises for problem solving. At level 2, there is no room for investigators to pursue other tracks than those that target the

predefined problem. At this level, there are lawyers and others with knowledge of rules and regulations that will identify the facts. Investigations at level 2 are usually passive with trifling results within an agreed cost boundary. At this second level, investigators attempt to find answers to the question: *How did it happen?*

Level 3 Evidence Investigation is focused on revealing something that is kept hidden. Examiners will choose their tactics for success in disclosure of possible misconduct and white-collar crime. They are going for the unknown. Investigation steps are adapted to the terrain, where different information sources and methods are used to get the most facts on the table. At level 3, there are detectives, psychologists and other knowledge workers to uncover possible crime. While levels 1 and 2 are focused on predefined suspicions of financial crime, level 3 is focused on suspicions of financial criminals. The focus has shifted from offence to offender. There are always criminals who commit crime. Level 3 has a personnel focus, while levels 1 and 2 have an activity and legal focus. Level 3 is characterized by the pursuit of responsible individuals, typically executives, who may have abused their positions for personal or organizational illegal gain. This is a more intensive investigation, because suspicions and suspects should be handled in a responsible manner with respect to the rule of law and human rights. Investigations at level 3 are active with significant breakthroughs in the investigations. New knowledge emerges that was not present in advance of the investigation. The investigation project is conducted in a professional and efficient manner. At this third level, investigators attempt to find answers to the question: *Why did it happen?*

Level 4 Value Investigation is focused on the value for the client being created through the investigation. The purpose of the investigation is to create something that is of value for the client. It may be valuable new knowledge, valuable settling of disagreements about past events, valuable external opinions, and valuable input to change management processes. The investigation's ambition is that the result will be valuable for the client. The value may lie in the cleanup, modification, simplification, innovation and other measures for the future. The investigation takes into account that it should be prudent. A number of explicit considerations are identified and practiced throughout the examination. The

examination is based on explicit choices regarding information strategy (sources), knowledge strategy (categories), methodology strategy (procedures), configuration strategy (value shop) and system strategy (technology). Explicit strategic choices make the investigation transparent and understandable to all involved and interested parties. Here it is often investigators in interdisciplinary environments who create value for the client. Investigations at level 4 are characterized by active use of strategies, with substantial and decisive breakthroughs in the examination. The investigation lays the foundation for learning and value creation in the client's organization. Detection of deviations and termination of such deviations create value for the client organization. At level 4, detection, disclosure, clarification, analysis and resolution are seen in context. There will be less to uncover in the future if current prevention is strengthened. It will be better in the future if matters are resolved completely. Investigators will create value through proper scrutiny. The investigation creates value before, during and after the examination. Before the investigation, an understanding of risks and priorities develop. During the investigation, an understanding of methods and procedures develop. After the investigation, barriers are constructed, holes are sealed, work flows are developed, and continuous evaluations are established. At this fourth and final level, investigators attempt to find answers to the question: *How to prevent it from happening again?*

Evaluation Report

Just like internal examinations result in investigation reports, so do external inquiries result in evaluation reports. While investigation reports describe findings and conclusions, evaluation reports describe assessment and appreciation. A typical evaluation report has the following contents:

- *Introduction* with description of the subject of investigation, how the suspicion arose, why the investigation was initiated, and what was investigators' mandate. Discussion of the suspected economic crime using convenience theory and other theoretical perspectives.
- *Presentation of criteria* to evaluate the investigation, including evaluation criteria for the investigators' choice of strategies (knowledge strategy, information strategy, methodology

strategy, system strategy, and configuration strategy). Evaluation criteria should include motives for the investigation, follow-up after the investigation, and resource consumption by the investigation. The right of contradiction, the protection against self-incrimination, as well as written procedures are important considerations in an investigation and thus relevant for the evaluation.

- *Discussion of procedure* to collect information on the investigation for the evaluation. Internal investigation processes are often very secret activities for everyone other than those directly affected. To the extent media coverage occurs, journalists tend to receive and communicate only biased and selected data from investigation clients. Much of what is referred in the media about an investigation can be misleading. Media and other data sources should thus be scrutinized in terms of their credibility and quality of information. Often it is only the investigation report that is available for evaluation.
- *Description of investigation* that is evaluated, how the investigation was conducted, including considerations that were taken into account, and what mindset may have dominated the investigation. Description of individuals who commissioned the investigation, their positions and perspectives. Description of individuals who conducted the investigation, their qualifications and track record. Description of persons who were subject to investigation, their positions and suspected behaviors. The investigation can be discussed in terms of principal-agent theory and other theoretical perspectives.
- *Evaluation of investigation* by applying criteria for evaluating the investigation (2) on how the investigation was actually conducted (4). The investigation report quality should be assessed as well. The extent of social responsibility by investigators can be assessed, that is, being accountable (business responsibility to society), compensating for own negative impacts (business responsibility for society), compensating for others' negative impacts (business responsibility for society), contributing to societal welfare (business responsibility for society), operating their business in an ethically, responsible and sustainable way (business responsible conduct), taking responsibility for society and the

environment in broad terms, and managing by business its relationships with society. When detecting serious white-collar crime and not telling law enforcement because of the client attorney privilege, is an example of lack of social responsibility on the part of investigators and should be criticized by evaluators. Cost-benefit for the investigation is important to evaluate, as the added value contributed by the investigation should be assessed.

- *Maturity model* to assign the investigation to a stage or level of maturity. A maturity model consists of several stages, where the number of stages can be determined by evaluators. The stages are sequential in nature, occur as a hierarchical progression that is not easily reversed, and involve a broad range of organizational structures and activities. A maturity model for evaluation with four stages, for example, might consist of the following stages: activity-based investigation, problem-oriented investigation, detection-oriented investigation, and value-oriented investigation. Such stages have to be clearly defined to enable allocation of the investigation to one of them.
- *Conclusion* with recommendations what investigators can learn from the evaluation. Description of how similar investigations should be carried out in the future.

Conclusion

This article has addressed the issue of evaluating fraud examinations. Fraud examiners are faced with many dilemmas. For example, if they obey the mandate completely, then they may become biased into a blame game where the client wants the blame to be located somewhere and not somewhere else. However, if examiners ignore the mandate and reconstruct the past wherever they find relevant evidence, then they run the danger of not getting paid by the client.

A number of criteria were presented in this article that can be applied by clients both in advance in terms of requirements as well as in the aftermath in terms of a judgment of consulting work provided by investigators. When assessing cost-benefit ration for an examination as an investment, many of these criteria will contribute to determine whether the investigation was or was not a profitable and therefore a smart investment.

There are several avenues for future research based on Gottschalk (2016) and this article. For example, the maturity model should be explored both in terms of its theoretical basis as well as its empirical validation. Next, there is a need to draw upon the larger body of research on evaluation. Also, criteria may be organized into an evaluation framework.

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