



Fraud Waits for No One: Best Practices for Managing a Remote Investigation Today

August 2020

This is the second article in a series on leading practices for planning and managing remote investigations.

The need to investigate allegations of fraud or misconduct is often time sensitive. When employees engage in fraud or misconduct, organizations risk wasting or abusing precious assets and resources if they fail to respond quickly.

Moreover, even during periods of crisis, regulators continue to expect that organizations will conduct investigations in a timely manner. When considering the way in which organizations respond in times of crisis for the organization, Michael B. Himmel, Partner and Chair of the White-Collar Criminal Defense practice at Lowenstein Sandler, observes, “Regulators will scrutinize the affirmative actions taken by public and private organizations to address the allegations, once they are raised. The organization’s response can help mitigate, or exacerbate, any issues or problems a company may have with its constituents, including its regulators.”

Himmel advises his clients to take action promptly when internal issues arise. “When dealing with allegations, an organization’s action or inaction can mean the difference between being granted a deferred prosecution agreement from the Department of Justice or not.” Relatedly, Himmel notes, “From the civil perspective, how quickly an audit committee responds to an allegation can determine whether a derivative lawsuit has merit.”

With these factors in mind, the imperative is clear: Organizations should not wait until the restrictions imposed during the COVID-19 pandemic are relaxed or lifted to undertake important investigatory work.

There is no doubt that the current environment raises many challenges, obstacles and ostensible reasons to delay investigations. Tragically, many regions in the United States and many countries continue to experience a rise in COVID-19 cases, hospitalizations and fatalities. For this reason, many restrictions, such as those related to cross-border, inter-state and international travel, remain in place.

These restrictions make conducting face-to-face interviews with witnesses or collecting documentation onsite, for instance, difficult or impossible. Many organizations, therefore, remain caught in a state of investigatory paralysis, opting to delay or defer investigations to a later, undetermined date.

The good news for these organizations is that all aspects of investigations can be planned and managed remotely — and often as efficiently and effectively as onsite investigations.

Planning Remote Investigations

The planning phase is one of the most important aspects of any investigation, whether onsite or remote. When it comes to remote investigations, it's crucial that investigative teams are proactive and thorough in defining and articulating the objectives, work steps, communication protocols, timelines and contingencies related to the investigation. The following are a few leading practices to consider during the planning phase:

- **Research Government Regulations and Restrictions:** This applies specifically to the location in which a remote investigation is to take place. For example, investigations teams should proactively research laws that govern the activities to be undertaken when conducting investigations or collecting evidence. Many laws, such as those related to data privacy and state secrets, vary around the world.
- **Scope, Timeline and Budget Setting:** Given scope and travel limitations, confirming scope and workplans with all stakeholders early in the process helps avoid surprises if certain workstreams that would be expected to occur under normal circumstances are not feasible. Any potential positive or negative consequences associated with decreasing the investigatory scope should be considered, such as the expectations that regulators may have with the reduction of work, as well as cost efficiencies that may be utilized in other aspects of the investigation. (As a positive example, extra room in the budget stemming from the inability to perform site visits

can be utilized for sampling of documents or additional areas of testing.)

- **Consider Limitations to Remote Collections and Data Imaging:** Investigative teams should verify data accuracy and completeness and be prepared to work around any existing travel limitations to conducting data collections of electronic devices including phones and hard drives. Certain challenges associated with collecting data during cross-border investigations have always existed, and the additional complexity during the pandemic makes cross-border data collection even more challenging. As such, investigative teams should plan as far in advance as possible to collect data and consider potential scope limitations. (This topic will be discussed in more detail in the next article in the series.)
- **Establish Clear Roles and Responsibilities:** With team members working from different locations, it's especially important to ensure that discrete workstreams are clearly assigned to maximize efficiency and minimize duplication of efforts.

Managing Remote Investigations

After the planning phase for conducting a remote investigation is complete, the investigation team must next focus its attention on execution. The following leading practices are examples of how to execute the plan effectively and efficiently.

- **Utilize Project Management and Tracking Tools:** Because of the inability to meet in person and higher dependence on email and other electronic communications, robust tracking protocols are important to clearly monitor the investigation workstreams. For some projects, a simple spreadsheet might suffice. For others, a more sophisticated data tracking and visualization tool can be leveraged to create dashboards or provide seamlessly consolidated data and results from multiple teams. These centralized tracking tools also help reduce email traffic, discourage the habit of saving documents on local computers, and maximize easy access to the latest documents.
- **Establish Regular Status Calls:** Remote investigations and the fact that team members may be working from multiple distant locations pose unique challenges for intra-team communications. For this reason, scheduling frequent status calls/video meetings is critical. Well-

organized and well-planned calls with a formal agenda help ensure that information is being leveraged and shared, that issues and questions are addressed, and that everyone is updated sufficiently.

– **Establish and Promote Means of Informal**

Communication: This applies to team members. While Zoom meetings have certainly upgraded the typical conference call, we’re all learning that the spontaneous meetings that once took place in office (e.g., swinging by a colleague’s office or encountering them in the hallway) are difficult to replicate now. The use of chat platforms helps facilitate these valuable casual discussions. These informal communications can also help maintain team morale and reduce the feeling of isolation brought on by our virtual times.

– **Scheduling Meetings and Interviews Across Time**

Zones: It may sound basic, but being mindful of time zones and time differences across national and international borders is crucial when conducting witness interviews remotely. Prior to COVID-19, investigation team members would likely have traveled to a client’s offices, and the in-person interviews conducted might have lasted a full day. Travel restrictions limit that ability, and in-person interviews are now conducted virtually. However, it may be difficult to avoid scheduling remote interviews in the early morning or late at night. Therefore,

it is advisable to plan and schedule the meetings and interviews as far in advance as possible to allow both the interviewers and interviewees to agree on a window of time that works best for everyone.

Conclusion

While most companies may hesitate to initiate an investigation during a time of crisis, it can be more detrimental to delay matters that involve issues such as fraud and misconduct. Because a remote investigation can often be as efficient and effective as onsite investigations, companies and their outside counsels should not wait. And with thoughtful planning for additional issues that may arise with remote investigations, such as government restrictions, data collection difficulties and different time zones, limitations presented by unique circumstances can be addressed and overcome. Like an onsite investigation, planning and execution are keys to conducting an efficient remote investigation.

In our next article in the series, we will discuss best practices for collecting data. For a general overview of the investigations landscape during COVID-19, read the first article in the series, “The Challenges (And Surprising Benefits) of Conducting Remote Investigations.”

© Copyright 2020. The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals.

AUTHORS

MAURICE CRESCENZI

Managing Director
maurice.crescenzi@fticonsulting.com

YULIA MAKSIMENKO

Managing Director
yulia.maksimenko@fticonsulting.com

TARA MULKEEN

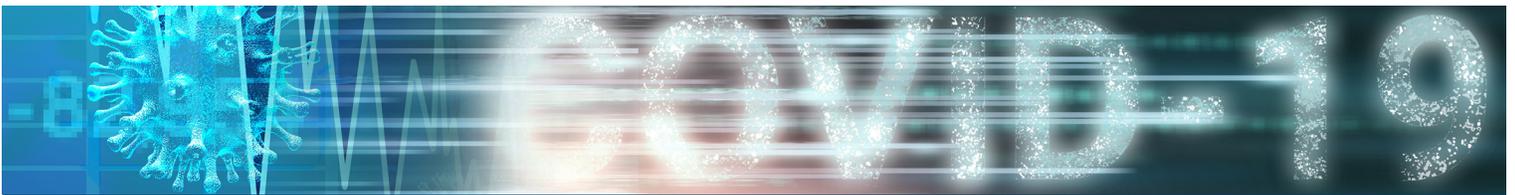
Senior Managing Director
tara.mulkeen@fticonsulting.com

BRIAN C. ONG

Senior Managing Director
brian.ong@fticonsulting.com

EDITH WONG

Managing Director
edith.wong@fticonsulting.com



Learn more at fticonsulting.com/covid19