

## INTERNAL INVESTIGATIONS

## Best Practices for Directors During Internal Investigations in an International Company

*Providing oversight on internal investigations can be among the thorniest of issues for directors, especially if the probes involve senior management. In this article, two experts on internal investigations, Dan Bookin of O'Melveny & Myers and Brian Loughman of Ernst & Young, offer best practices.*

### What key questions should directors ask when an international corporation faces an internal investigation?

**Bookin:** If management is conducting the investigation, then it's the usual questions that boards ask about significant issues. If the board members themselves are conducting the investigation, then it's a whole different ballgame because they're going to be intimately involved in a lot of questions that are going to be asked.

One of those questions is what law firm should we use to assist us? The firm should be independent, not the company's regular counsel. The law firm should be experienced in internal investigations. It should have credibility with the regulators if it gets to that point. Another question is how the committee maintains its independence. Often in an investigation, the process and the form of the investigation are just as important as the conclusions.

An international investigation adds another dimension. The committee and the committee's law firm need to ask what relevant foreign laws exist. Some countries, for example, have strict privacy laws, much stricter than in the United States, so you need to tailor the investigation.

**Loughman:** The first thing I would really want to know is what has brought us to this juncture? How did we learn about this? Who did we learn it from? And what have we done to date? What led to our decision that an investigation was required and who is going to do it?

If you can answer all of those questions, bringing to bear your experience in other roles, you can arm yourself to understand the developments that will follow.

**I think it is very important for board members to understand what's happening from an investigative perspective in our organization, this year or this quarter, and what are we learning from that. Are we seeing a preponderance of certain types of investigations?**

Before an investigation happens, it's a leading practice for a board to define an investigative protocol for management that enables them to say, for example, that this quarter we had 50 items; 15 of them were

related to HR issues and under our protocol they get handled by human resources and the general counsel. They have a protocol that escalates them as need be as opposed to having to do that on an ad hoc basis.

When management comes to you and says we need to talk about this, you know that it at least has been put through that protocol and a lot of the questions you would typically want to ask have already been answered.

### How should the board support the internal audit function?

**Loughman:** Beyond the basics of budgetary and technological support, it is creating a sense that internal audit is valued, that it is reporting directly to the board, and that its views are sought.

In some of the organizations with the best internal audit programs, anyone who ultimately wants to be a controller or a CFO of one of their businesses has to spend time in internal audit. The board can foster the sense of internal audit being a desired destination.

And what I would try for as a board member is specialization within internal audit on investigative work. I would make sure they get the appropriate training and make sure they get to make a quarterly report to the board.

I would also look for the appropriate level of training and specialization around FCPA.

### What is the ideal relationship between the board and the general counsel during an internal investigation?

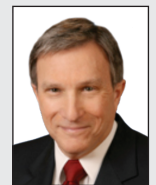
**Bookin:** Independent internal investigations are very frustrating for management and in particular for general counsel. Not only can they not be involved, very often the outside lawyers are being paid out of the general counsel's budget.

It's really important to make sure that management and the general counsel understand why it's necessary for the company's interests and their own interests to have an investigation that is independent and will be viewed as such by regulators and by the auditors.

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Brian Loughman



Daniel Bookin

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