



# INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA

Forensic Audit Workshop

18<sup>th</sup> – 19<sup>th</sup> October 2017

Waterbuck Hotel, Nakuru

Fraud Audit Planning and Execution

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Credibility

.

Professionalism

.

AccountAbility

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# Types of Fraud we Investigate



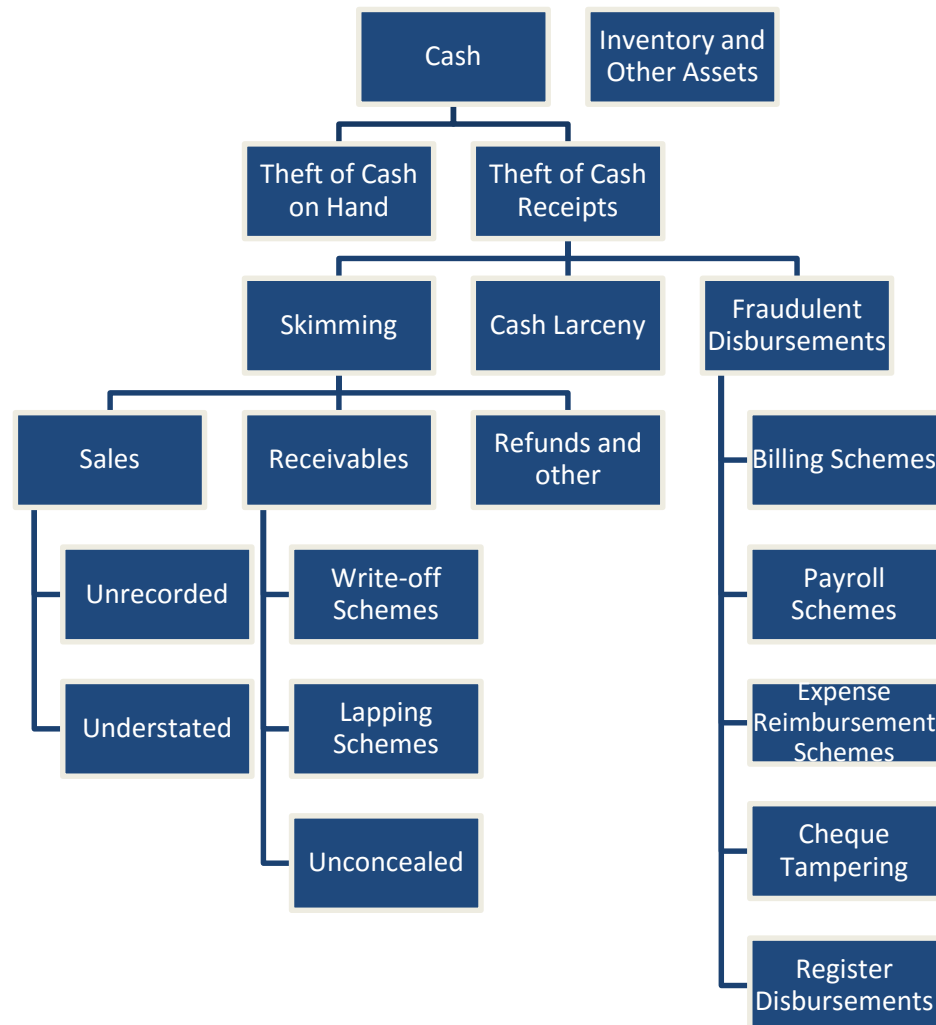
Courtesy: ACFE



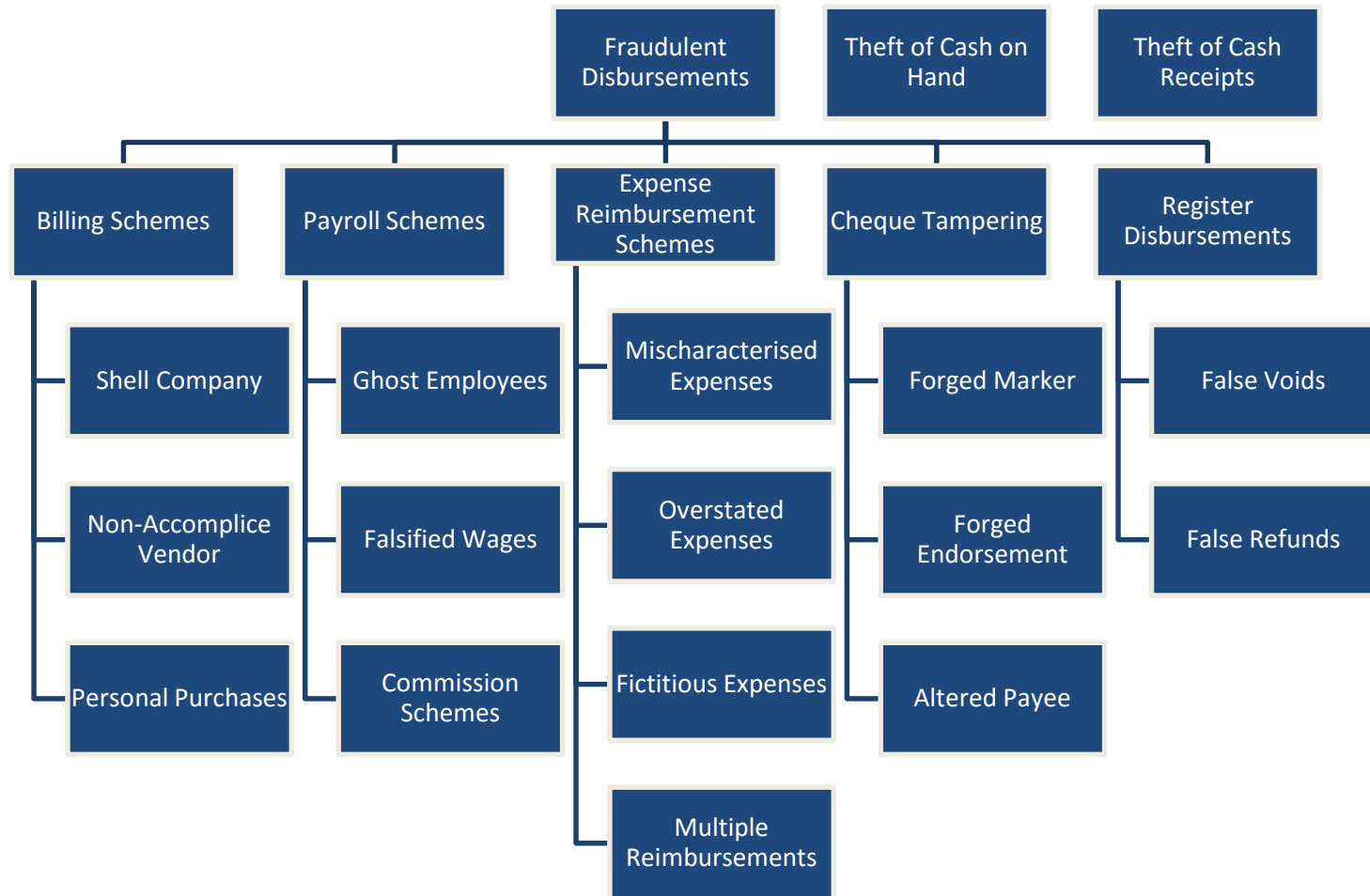
Asset Misappropriation

**Cash, Inventories & Other  
Assets**

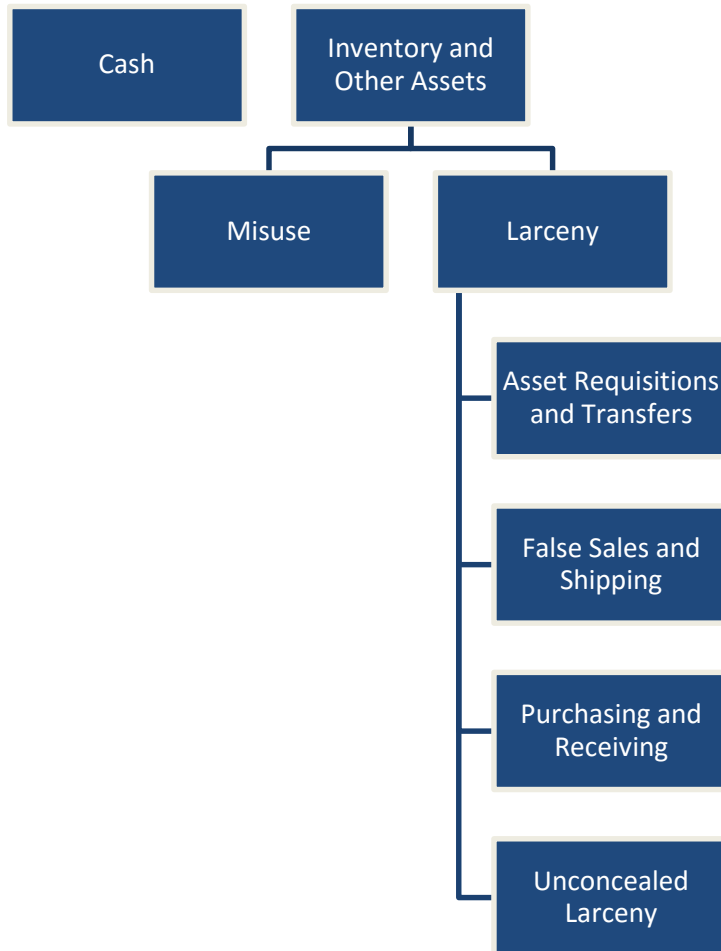
# The Fraud Tree: Asset Misappropriation - Cash



# The Fraud Tree: Asset Misappropriation - Cash



# The Fraud Tree: Asset Misappropriation - Inventories

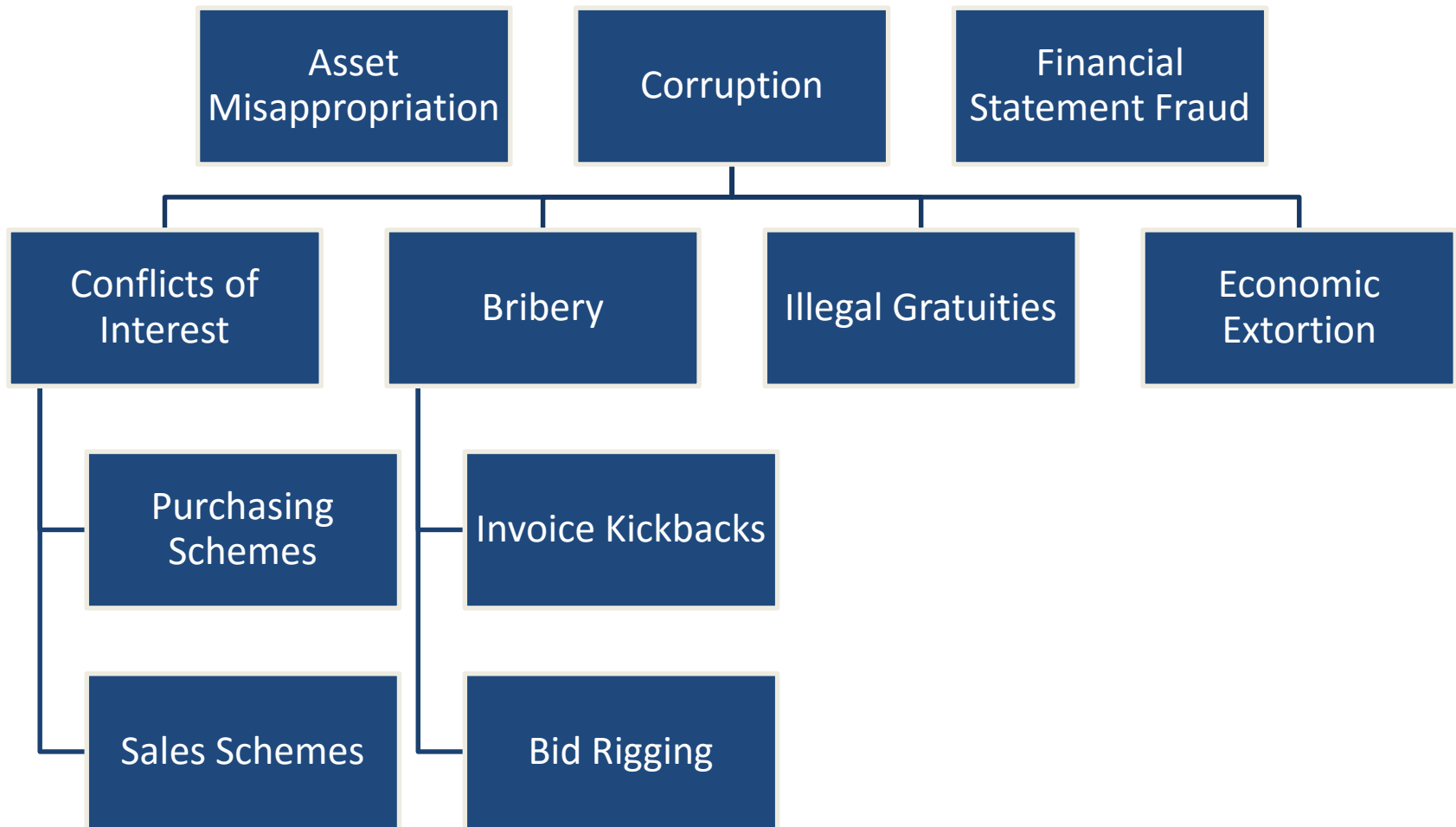




Corruption

**Conflicts, Bribery,  
Gratuities, Extortion**

# The Fraud Tree: Corruption

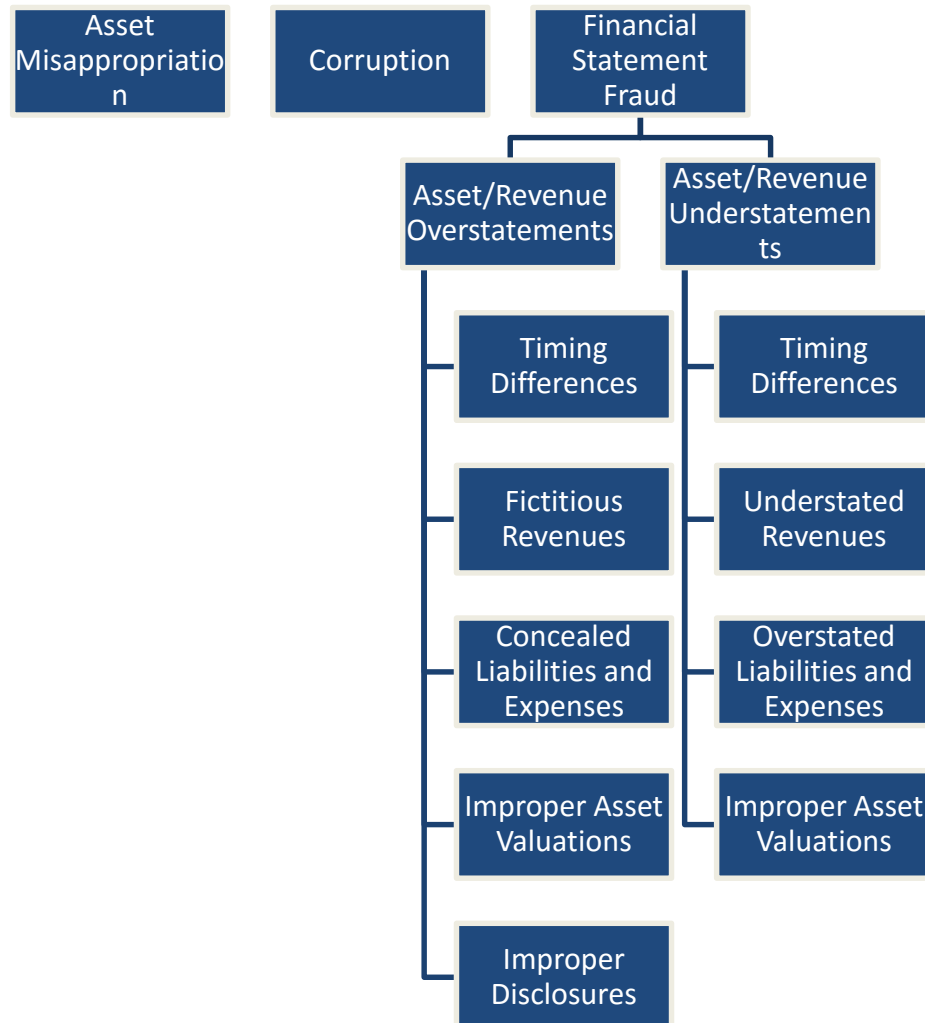




Financial Statement Fraud

**Misstated Assets, Liabilities,  
Revenue, Expenses**

# The Fraud Tree: Financial Statement Fraud





# Forensic Investigations

# **A systematic search for the truth**

# Investigations are Adversarial



Forensic engagements are commonly **adversarial in nature**, and must be entered into on the assumption that the outcome of the engagement may be determined in court, whether criminal, civil or both, or in a regulatory or disciplinary hearing.

# Great care - accuracy



- As a consequence of the adversarial nature of forensic work;
  - **great care and**
  - **accuracy**
- are needed in our work and in our reports. Witnesses are often undermined by basic mistakes such as
  - **making statements unsupported by evidence or**
  - **a lack of knowledge of the detail.**
- Facts should not be treated as established without good evidence.
- Care should be taken not to give legal opinion or to opine on the “ultimate issue” in a Court case (e.g. whether a defendant is guilty).

# Great care - accuracy



- Forensic reports are Prospective material for court.
- It is a characteristic of forensic work that facts are disputed, either through genuine misunderstanding or uncertainty or through deliberate concealment and deception. One or more of those involved in a dispute may well lie – and resolution of this is usually a matter for the Court, not us. This should be borne in mind when seeking to establish or rely on facts.

**The quality of our documentation must accordingly be sufficient to be able to withstand detailed scrutiny.**

# Great care - accuracy



- Forensic accounting engagements may lead to the payment of substantial sums by one party to another, or the loss of a job or even imprisonment for individuals.
- We should be aware of the responsibility this places on us and of the possibility of hostility toward us.

# Forensic Investigation Process



Preliminary  
Considerations,  
Planning  
and  
management

Gathering  
and analysis  
of  
Information  
(Execution)

Reporting

Investigation  
Closure/After  
math of  
Investigations

# Preliminary Considerations



- Identification of Clients, Stakeholders and Adversarial Parties
- Unique Engagement Considerations
- Independence and Conflicts of Interest – very important
- Regulatory and Legal Considerations
- Necessary Skills and Resources - Do we have the people to do it?
- Financial Considerations - Budget
- Engagement Letter

# Planning and Management



- Understanding the Issues – Understanding the scope
- [Workplan](#) Development – Who does what, timelines, deliverables (*Discuss Sample work plan*)
- Case Management – managing time, costs and quality
- Use of Non-Forensic Professionals – We may need use of other professionals – Lawyers, transaction advisors, procurement experts, land experts.

# Execution – gathering of Information



- **Corporate Intelligence**
  - Developing background information in relevant on individuals, companies and assets.
  - Key consideration is privacy regulations on retrieval and publication of personal information
- **Source Documents**
  - Differentiate items received from various sources, also differentiate different types of documents
  - Always maintain three copies of each document – the original, a working copy and a control copy
- **Document Control**
  - a system to accurately and efficiently record, trace and retrieve investigation documents. I.e. ensure/maintain chain of custody.
  - Maintain document integrity – no alterations or markings
- **Search and Seizure**
  - Search and seizure is a process of searching a premises (e.g. warehouse), location (e.g., office) or item (e.g. office desk) for documents or other property which may provide evidence relevant to an investigation and the subsequent removal of the documents or property in a systematic manner
  - Ensure you have authority to conduct search – e.g. court order or written consent from owner

# Execution – gathering of Information



- Interview and Note Taking
  - Ensure voluntary participation – no threats, no promises, no inducements
  - Plan the interview – understand the documents, no destructions, privacy
  - Questions typology – Introductory, informational and closing
  - Take notes as soon as possible. Where possible record verbatim
- Physical and Electronic Surveillance
  - Surveillance is the planned observance of people, places, or objects. It is the process of observing a person, group, event, process or electronic system in real time to gather evidence to support an investigation and the overall objectives of the engagement
  - Considerations – Regulations, privacy and use of contractors
- Digital Evidence Discovery -
  - The process of identifying and preserving digital evidence in a manner that is acceptable in legal proceedings

# Execution – Analysis of Information



- Financial Analysis
  - Understand the issues, allegations and objectives
  - Understand the people/organization
  - Types include – Horizontal and Vertical analysis, ratios, EPS, wealth gap, share trading analysis, transaction based analysis etc
- Non-Financial Analysis
  - Analysing non-financial data e g emails, statements, documents
- Charting/Visual aids
  - Assist in understanding relationships
  - Present complex information in an easy to understand and compact format
  - Eg timelines, flow charts, organization charts
- Collaboration
  - Coordinated effort of working jointly with others to conduct an investigation
- Comparison of Information
  - Distilling of information gathered
  - Building different views of all the information
  - Conducting the analysis and reconciliation of financial and non-financial data

# Reporting



- We have to write at some point
- It is the way we communicate or present all the hard work – Don't fail at this stage
- This is the point for you and team to make an impact
- Who do we communicate to?
- Best way to market yourself –consultant or internally

# Reporting



- **What to think about when reporting**
  - Time for clarity
  - Who do we communicate with?
  - What are we trying to do? – *communicate, convincing arguments, presenting relevant facts, achieve understanding and possibly change perception.*
  - What does the reader want?
  - What does the reader not want?
  - Structure of the report
  - Pulling it together

# Reporting



Time for **CLARITY**

“There is a thin line that separates the Finance team in Mombasa and the Procurement in Mombasa more so sharing the same office. The involvement of the Finance function in the procurement process increases risk of procurement fraud as the two office holders involved in procurement also have the authority to prepare/approve documents especially non regular items. The only major control is done in Nairobi who don't have direct inspection or receiving role of the procured items...”

# Reporting



## What do you want to tell the reader - contents

- Remind them of what you are doing –context and relevance
- How you did it (not required in all instances –can be annexure), but this is key for court purposes.
  - Detail the steps performed to acquire the data and analyze the data. This is very important in showing proper evidence handling.
  - The report should also list all software and hardware used to process the data, including versions of the software tools.
  - Also included in the a typical report is notes regarding any encrypted files that were found and what was done to them; meaning whether they were decrypted to find out their contents, or left encrypted and not processed or examined.
  - Keyword searching is another common task performed by investigators, and the keywords are usually agreed to in advance by the client asking for the investigation. It is customary to document those keywords in the forensic report in case they are ever needed in the future or if any questions come up

# Reporting



## What do you want to tell the reader - contents

- in the forensic report in case they are ever needed in the future or if any questions come up
- What you found – explain logically
- Basis of contents
  - Fact
  - Opinion
  - Assumption
  - Support
- What you conclude
- What you recommend

# Reporting



## What does a reader NOT want

- Speculation
- Appears –if you say it say it otherwise avoid –avoid sentences starting with “It appears...”
- Interesting points –avoid sentences starting with “It is interesting to note...”. If its not factual, it is not interesting at all
- Important to note –all we include in the report should be important enough and relevant enough –avoid sentences starting with “It is important to note...”
- Subjective statements –never include any subjective statements
- Irrelevant content for the sake of trying to impress with extent of work carried out
- Conclusions that are not well supported by a well constructed lead to the substantiation of the conclusion

# Reporting



## What to include in report – Report Structure

- Identify scope – always indicate
- Identify constraints/limitations – it is never smooth sailing
- Identify assumptions – sometimes you have to make assumptions, be open and clear about this.
- Identify basis of report
- Detailed findings
- Support documents – exhibits/analysis
- Conclusions within area of expertise

# Reporting



## How to go about it

- Plan overall layout and topics to be covered – have the end in mind all the time
- Consider work carried out in each of the topics
- Identify results of work carried out, to be converted into deliverable
- Identify sub-areas to be concluded
- Arrange sub areas in logical sequence
- Identify, list and consider assumptions that are essential
- Identify –list and consider areas where we were constrained and limited
- Prepare and extract support for areas identified
- Arrange in a logical order
- Consider all of the above
- Meet and discuss
- Convert into logical, well structured sentences and paragraphs

# Reporting



## How to go about it – cont'd

- Make your point up front
- Clean layout
- Descriptive headings
- Avoid redundancy
- Avoid padding (applying “make up” to a report)
- Do not use bullets to avoid logic
- Use visual tools –pictures, diagrams, flow charts, tables and graphs
- Trim fat
- Harmony

# Reporting



## Pulling it together

- Review
  - Use of comments as a tool to note review notes
  - Use of comments as a reminder
  - Use track changes
  - Reports subject to review
  - Review NOT edit
  - Apply logic
- Check against exhibits –factual accuracy
- Read, read and read
- Is it logical?
- Understand your report
- Understand your Exhibits - they should tell the same report as the report
- Understand your weak and strong points

Be proud of your Work



# The Aftermath of Fraud

Involving the police and the criminal justice system and moving on

**“In Kenya, it is not easy to get anyone behind bars as it is for a wife battering or any other criminal case” - Anonymous**



# The Police & Investigative Agencies

# Working with the Police and Investigative Agencies



- Forensic investigator may work with law enforcement agencies in some investigations
- Agencies could be:

Local: Police, EACC investigators, Central Bank Investigative units.

International: FBI, the Scotland Yard, SEC



# Working with the Police and Investigative Agencies



- Involvement of international agencies arises where foreign laws apply
  - E.g.: A listed American Company involved in bribery or corruption allegations in one of its Kenya branches
- **IMPORTANT:**
  - Understand of how the various law enforcement agencies operate and their objectives
  - In Kenya: Kenyan Penal Code Chapter 63 & Evidence Act Chapter 80

# Law Enforcers vs. Forensic Investigators



- Law enforcement agencies have wide experience in handling court proceedings and complex criminal cases
- Forensic accountants have the technical skills required to understand technical accounting and financial issues.
  - OBJECTIVE: realize the synergies of the two teams working together, foster cooperation, & understanding issues



# How to get on Working Together



- Understand the roles, mandates and objectives of all parties
- Both should complement each other
- Involve the police as early as possible, prepare an investigation plan with them
  - Private investigations tend to involve them late – may lead to duplication of roles and loss of time

# How to get on Working Together



- Be patient.
  - Work culture in public offices is different from that in the private sector



# How to get on Working Together



- Provide the professional expertise as they provide the resources and muscle at their disposal.
  - E.g. interview skills, evidence preparation

# How to get on Working Together



- Agencies apply a street smart approach
  - Experience, take learning on what happened, good or bad, deal with it and improve from it
  - Law enforcement officers apply a street smart approach which adds value to the investigation.
  - It is best applicable by law enforcers as the law gives them a wider jurisdiction

# How to get on Working Together



- However, differences arise due to the following:
  - Different mandates: investigators have narrower mandate, law enforcers may not want to share all the information
  - Time constraints: law enforcers have unlimited time to investigate – present a suspect in court, request a number of months to investigate

# How to get on Working Together



- Access to information: each team (law enforcers, forensic investigators) may have access to privileged information that the other does not have
  - E.g. tracing the proceeds
- Sharing of documents: maintain the chain of custody
- Be careful not to use confessions obtained by law enforcement agencies as part of the report

# What Law Enforcement Agencies want:



List of persons involved

Role of each person in the modus operandi of the scheme

Quantification of loss which can be tied down to each individual

Concrete evidence (beyond reasonable doubt) supporting the persons involvement

# What Law Enforcement Agencies want:



- Utilise this information to draw up the charge sheet which is very specific
  - For example, if the person was involved in falsifying 100 invoices, the charge sheet will give details of each invoice.
- In reporting, police may (and will!) not read the entire report:
  - Include a section in the conclusion showing each person involved, level of involvement and the supporting evidence

# What to do During Investigation



- Document the source of evidence.
  - Make sure you get the evidence through the right channels otherwise it won't be admissible in court.
- Scan the evidence and preserve the originals in evidence bags to avoid contamination
- Index the evidence to allow for easy reference and retrieval

# What to do During Investigation



- In case of signatures, always state that you are not a handwriting expert when alleging a suspect signed the document.
  - Obtain a copy of signature from his HR file and get his colleagues to attest that the signature is his/hers. Adds weight to your claim.



# What to do During Investigation



- Always try to get an interview from the suspect to query him/her on the suspicious transactions. This will help show that you were not biased or witch hunting.
- Get all the minutes/consultation notes signed.



# Benefits of Including Police



- Have access to resources not available to the public
  - e.g. Bank accounts, phone records, mobile money, etc, recovery
- Can go to high risk areas as they are armed and well trained in hostile environments – adversarial in nature
- Can easily get a court order to search the suspects residence and other relevant places

# Drawbacks in Working with the Police

- Susceptible to bribes from the suspects



# Drawbacks in Working with the Police



- May use force and intimidation which might limit the suspects' cooperation to the investigation



- CID have more resources than normal police but only get involved in cases with significant losses.



# The Courts

Some Tips



# Handling Court Matters



- About 90% of the Case is proven by the Forensic Report
- Conduct the investigation as fast as possible
  - Obtain sufficient exhibits to sustain the case
    - If the case is out of your capability, involve the police (if client approves so)
  - Confirm the small things
  - Prepare, prepare, prepare, plan, plan, plan
- Company lawyers can assist in preparing for the case, arrange to meet them

# Handling Court Matters



- Be aware of the STRONG and WEAK points in the forensic report
- REMEMBER: When testifying, your credibility is on the line and have to be as CAREFUL as possible
- Explain technical issues in a simple manner for judge to understand – e.g. avoid ‘jargon’ such as ‘Debits’ or ‘Credits’; ‘Passwords’ or ‘Usernames’

# Handling Court Matters



- In case of IT Forensics, ensure that the chain of custody for evidence is maintained, not interference, comply with law
- Be totally independent
  - Do not be bend on proving guilt
  - DO NOT testify on an aspect you have not investigated
  - Testify as best as you possibly can - FACTUAL

# Handling Court Matters



- Know your Forensic Report pretty well
- If you have many exhibits (e.g. about 300), identify about 5 critical ones and know them by heart
  - Exhibit No., Document Type, Contents, The Story behind the Exhibit
  - You may use sticky notes to label the exhibits

# Handling Court Matters



- DO NOT express an opinion
  - Expert Witness: Can express an opinion
  - A Witness of Fact: CANNOT express an opinion unless the Judge prompts so (and even when prompted, re-confirm)
- In the case of an Expert Witness, the court would require that s/he testifies

# Handling Court Matters



- Look at the Judge  
FACE to FACE





# Contacts

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