



Board Audit Committee Seminar

Role of the Audit Committee in Whistleblowing and

Investigations

by:

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Uphold public interest

Credibility

Professionalism

Accountability

Profile

- CPA, CIA Erick Audi
- MBA-UON (Finance), B. Comm. -University of Nairobi (UON), Accounting Option
- CPA, Certified Internal Auditor (CIA), CISA Certifications
- Certified ISO Lead Auditor; ISO 9001:2015
- Member of ICPAK, ISACA, IIA & KIM
- Over 16 years working experience from private & public sector institutions including (Audit Firm, KRA, KeRRA, Ketraco & KenGen)
- Passion for Governance, Risk Management & Control Advisory Services.
- Seasoned Facilitator/Trainer on Internal Audit, Controls, Risk Management and Governance processes for Audit Committee & Boards.
- Currently, works at KenGen as the Internal Audit & Risk Manager

Presentation Agenda



- ❑ Introduction
- ❑ Legal & Regulatory Framework
- ❑ Role of Audit Committees- Revisited- Monitoring Compliance with Laws and Regulations
- ❑ Role of Audit Committees whistleblowing and Investigations
- ❑ Conclusions

1.0 THE PUBLIC FINANCE MANAGEMENT REGULATIONS, 2015

- ❑ **Reg. 165 (1)** The Accounting Officer should develop risk management strategies which should include fraud prevention mechanism and a system of risk management and internal control that builds robust business operations.
- ❑ **Regulation 167.** when indications of fraud, material breaches and wasteful expenditure have been identified in a state organ, or any other national government entity, the Head of Internal Audit Unit should **immediately notify the Cabinet Secretary.**

THE PUBLIC FINANCE MANAGEMENT REGULATIONS, 2015- AC GUIDELINES FOR THE NATIONAL GOVERNMENT- GAZETTE NOTICE NO 2691



- ❑ **AC Oversight role in Whistleblowing**
- ❑ The Audit Committee should review arrangements by which staff of the entity or any other person may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters.
- ❑ The AC's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

Mwongozo Code of Governance for Public Entities in Kenya



Chapter 4: The Board should ensure that:

- There is a whistle blowing policy in the organization.
- The whistle-blowing policy protects and prohibits victimization of those who disclose or provide information in good faith.
- An independent party is responsible for receiving and investigating reports received.

Mwongozo Code of Governance for Public Entities in Kenya



The Board should disclose:

- The Code of Ethics and Conduct of the organization on the website of the organization.
- The policy of the organization on conflict of interest.
- The policy of the organization on whistle blowing on the website of the organization.
- To what extent the Code of Ethics and Conduct, Conflict of Interest and whistle-blowing policies have been effective in tackling unethical behavior in the organization.

- ❑ **The Board shall establish and put into effect a whistle-blowing policy whose aim is to;**
 - ✓ Ensure all employees feel supported in speaking up in confidence and reporting matters they suspect may involve anything improper, unethical or inappropriate;
 - ✓ Encourage all improper, unethical or inappropriate behaviour to be identified and challenged at all levels in the company;
 - ✓ Provide clear procedures for reporting of such matters;
 - ✓ Manage all disclosures in a timely, consistent and professional manner; and
 - ✓ Provide assurance that all disclosures shall be taken seriously, treated as confidential and managed without fear of retaliation.
 - ✓ *The Board shall disclose the WhistleBlowing Policy on its annual report and website.*

Audit Committee Roles -Revisited

Financial reporting

- Appropriateness of accounting policies
- Disclosure requirements
- Fairness and balance of MD&A/
operating review
- GAAP conversion

Risk management & internal control

- Understanding of key risk areas
- Effectiveness of controls
- Fraud risk

Audit committees: Areas of focus

External audit

- Appointment and remuneration
- Scope of work
- Independence requirements
- Significant audit findings/recommendations
- Reviewing the performance of external auditors

Internal audit

- Charter, authority and resources
- Scope of work
- Internal audit effectiveness
- Responses to internal audit recommendations

Maintaining & measuring effectiveness

- Training needs
- Maintaining financial literacy
- Annual performance evaluation of audit committee

Communicating & reporting

- Relations with management
- Updates and recommendations to the full board
- Reports to the board and shareholders

Regulatory, compliance & ethical matters

- Effectiveness of system for ensuring compliance with laws and regulations
- Code of conduct/ethics
- Whistleblowing

Monitoring Compliance to Laws and Regulations & Ethical matters



- ❑ AC are responsible for overseeing compliance to legal, regulatory and industry standards, internal policies, other stakeholder requirements, and ethical matters.
- Review and recommend for approval of policies, processes and framework for identifying, analyzing and addressing complaints (including whistle blowing) and for reviewing material complaints and their resolution.
- Review the effectiveness of the system for monitoring compliance with laws, regulations, internal policies and industry standards and the results of management's investigation and follow-up (including disciplinary action) of fraudulent acts or non-compliance.
- Ensure staff who are aware of possible financial malpractice have a safe channel through which to report their concerns.

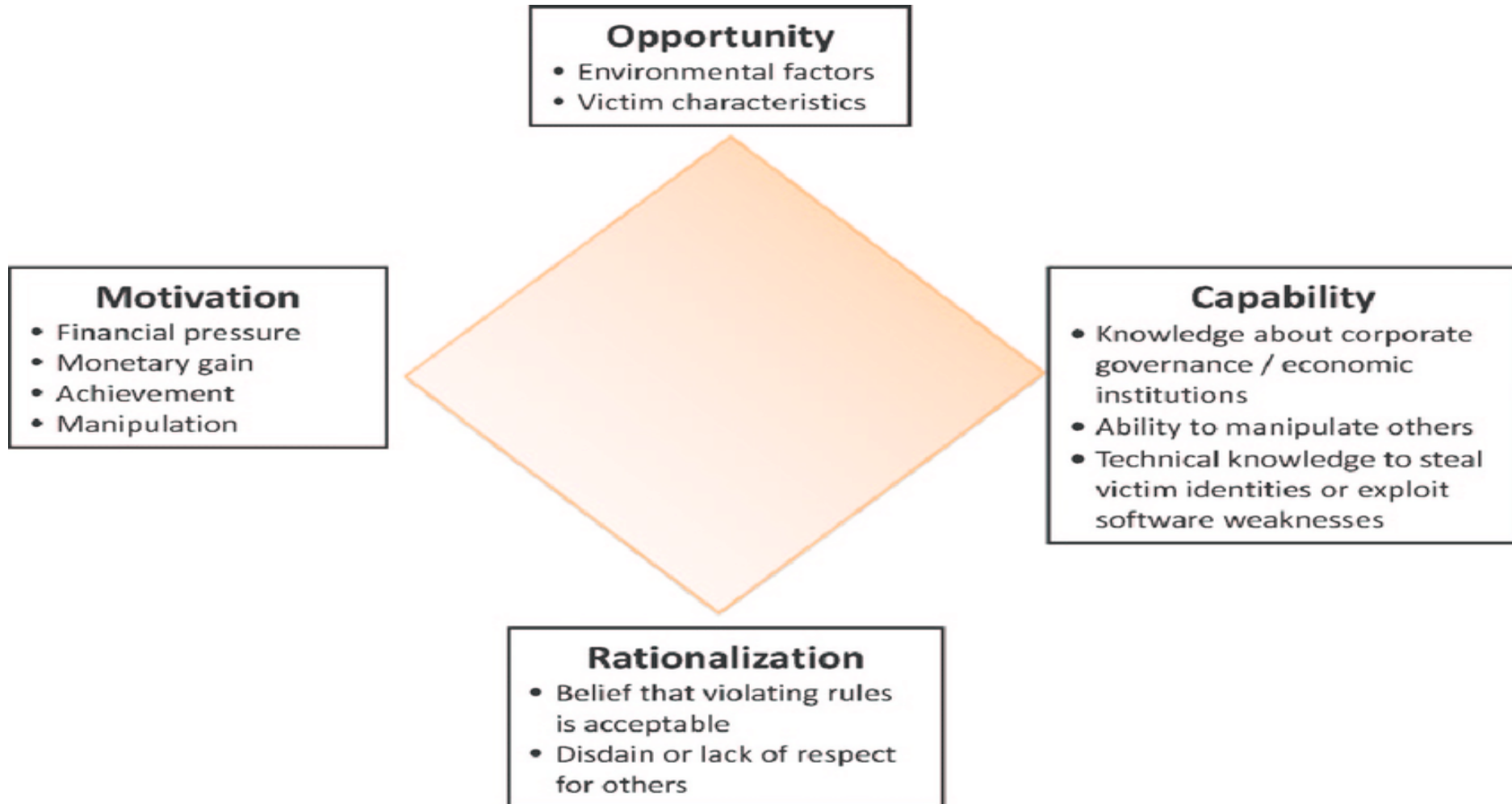
Monitoring Compliance to Laws and Regulations & Ethical Matters



- Obtain regular updates from management and the head of legal/compliance about compliance matters that may have a material impact on the entity's financial statements, strategy, operations or reputation.
- Be satisfied that all regulatory and legal compliance matters related to the entity have been considered in the preparation of the F/Ss.
- Review the findings of any examination by the Regulators.
- Participate in the appointment, promotion or dismissal of the head of compliance and legal counsel, if any.
- Meet separately with the head of compliance and legal counsel without management personnel being present, if these functions are in place.
- *In regulated industries such as banks and insurance, a head of compliance may be appointed to monitor the entity compliance to laws and regulations*

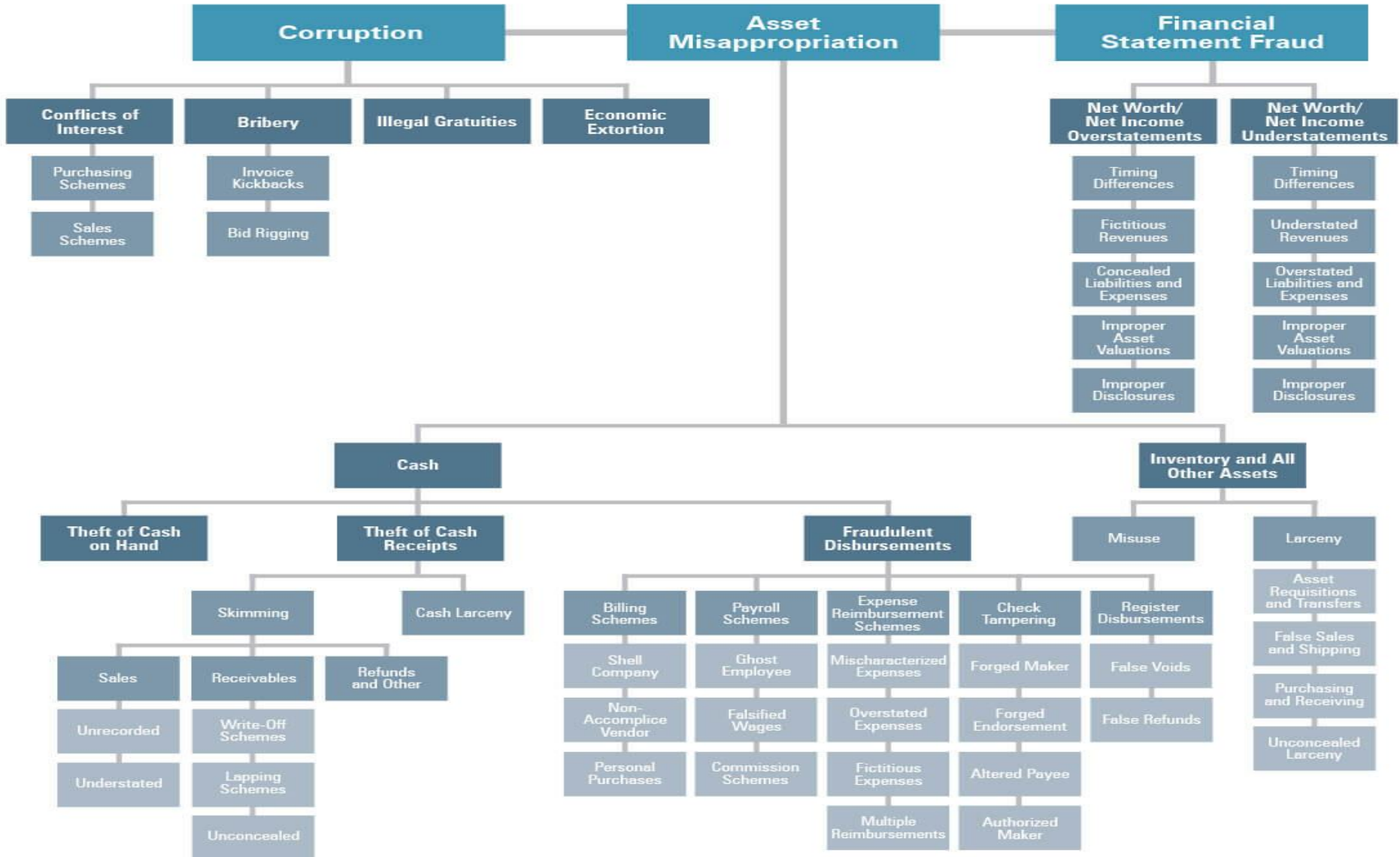
Role of AC in Fraud Investigations

Red Flags – The Fraud Triangle/Diamond



THE FRAUD TREE

OCCUPATIONAL FRAUD AND ABUSE CLASSIFICATION SYSTEM



Seven Keys to Fraud Prevention



Role of AC in Fraud Investigations



- ❑ Oversee Management's arrangements for the prevention and deterrence of fraud.
- ❑ Ensure that appropriate action is taken against known perpetrators of fraud once informed of the allegations.
- ❑ Challenge Management, Internal and external auditors to ensure that the entity has appropriate anti-fraud programs and controls in place to identify potential fraud and ensure that investigations are undertaken if fraud is detected.

What is Whistleblowing



- ❑ **Whistleblowing** is the process through which an individual raises a concern or disclosure about wrong doings or serious malpractices within an organization. This can be done via internal processes set up by the organization (internal whistleblowing) or to an external body such as a regulator (external whistleblowing).
- ❑ **A whistleblower** is an individual who alerts, via the appropriate channels, an organization on serious malpractice or actions that endanger the firm's employees or assets. The individual could be an internal party (e.g., employee) or an external party (e.g., suppliers, customers or the general public).



Key issues for Boards / Audit Committees

- While the responsibility for establishing and operating effective internal whistleblowing procedures lies with the executive, boards should maintain oversight and require independent assurance that the organization's whistleblowing policies and procedures are effective in achieving the appropriate outcomes.
- Given the potential conflicts of interest, the executive will need to devolve the day-to-day running of the process to a function that is considered to be independent. Internal audit's independence from the executive and objectivity give it the potential to be involved in whistleblowing arrangements, e.g., in a triage role, as a channel of communication or carrying out investigations.
- Internal audit cannot give assurance to the board on effectiveness if it is playing an integral part in the process of internal whistleblowing in the organisation.



Key issues for Boards / Audit Committees

- Audit Committee Chairs should discuss the issue with Head of Internal Audit to ensure that internal audit's involvement in whistleblowing does not undermine its ability to carry out its prime assurance functions.
- Where internal audit is involved in the procedures for whistleblowing the Board should ensure:
 - There is a separate, independent mechanism to provide assurance on the effectiveness of the whistleblowing procedures;
 - ✓ Internal audit's main functions and wider assurance roles are not compromised
 - ✓ Internal audit is properly resourced in terms of staffing and skills
- Where internal audit is not playing a direct whistleblowing role it *should provide assurance on the effectiveness of the system and procedures to the board.* It also should have the right to be informed of all whistleblowing reports so that it can consider what impact they have on its overall opinion to the board concerning risk management and internal control in the organization.

Role of Audit Committee in Fraud Risk Management



- ❑ Assessing the tone at the top
- ❑ Overseeing company compliance programs
- ❑ Review the whistle-blower programs
- ❑ The whistleblowing must be reported periodically to the audit committee.
- ✓ *It is important to get a summary of all complaints received at least annually.*
- ✓ *Audit committees should determine how often they wish to receive information.*

Role of Audit Committee in Whistleblowing & Fraud Investigations



- ❑ Reviewing corporate policies relating to compliance with laws and regulations, ethics, conflicts of interest, gifts and the investigation of misconduct and fraud.
- ❑ Ensure new developments in the regulatory field are infused into the Company's operations.
- ❑ Reviewing current and pending corporate governance related litigation or regulatory proceedings to which the organization is a party.
- ❑ Ensure code of conduct is in place and distributed to staff.
- ❑ Ensure whistleblowing arrangements are in place

Role of Audit Committee in Whistleblowing & Fraud Investigations



- ❑ Understand the nature of any significant issues that come to light and management's investigation and follow-up, including disciplinary action
- ❑ Review trends in compliance and management's plans to address systematic issues.
- ❑ Review findings and reports of examination by regulators.
- ❑ Being satisfied that disciplinary actions management has taken to respond to violations are appropriate.
- ❑ Understand how internal audit assesses the risks inherent in the fraud, compliance and ethics program and covers them in the audit work plans.

Role of Audit Committee in Whistleblowing & Fraud Investigations



- ✓ Review and recommend for approval of policies, processes and framework for identifying, analysing and addressing complaints (including whistle blowing) and for reviewing material complaints and their resolution.
- ✓ Review the effectiveness of the system for monitoring compliance with laws, regulations, internal policies and industry standards.
- ✓ Obtain regular updates from management and the head of compliance about compliance matters that may have a material impact on the entity's financial statements, strategy, operations or reputation.

Whistle Blowing Programmes – Best Practice Tips:



- Safeguard employees who report misconduct against any form of retaliation (i.e. threats, harassment and demotion) – allow for anonymous reporting.
- Make certain employees report incidents outside their chain of command – avoiding their supervisor/department head/division leader, by using a helpline, e-mail or mailbox.
- Maintain confidentiality to the fullest extent possible.
- Ensure that any hotline/helpline is both toll-free and includes as many language translations as appropriate, for a company with global operations.
- Establish working relationships and protocols for various departments within the organisation, prior to issues surfacing. For example, Human Resources to address personnel issues and Security or Risk Management for more serious issues such as suspected fraud.

Whistle Blowing Programmes – Best Practice Tips:



- ❑ Include controls for targeting certain situations that may require immediate steps to prevent further risk or damage.
- ❑ Provide clear governance expectations about how matters will be reported to the ultimate governing authority, presumably the Board of Directors, or sub-committee (Ethics and Risk).
- ❑ Formalise processes for recording and tracking reported issues and incidents.
- ❑ Communicate information about the reporting and investigation process, how it operates, what kinds of issues have arisen and how they were dealt with.
- ❑ Establish communication channels not only for reporting misconduct, but *also for asking questions and receiving guidance (Ethical Dilemmas)*.

Whistle Blowing Programmes – Best Practice Tips:



- Track trends that may appear in one business or across businesses, or specific levels within the organization.
- Assign appropriate people with both the requisite authority and experience to perform the investigations.
- Establish *a company code of conduct/whistleblowing policy* that requires all leadership, senior management and employees to fully cooperate in any investigation into allegation of misconduct.
- Establish and consistently enforce a disciplinary policy. A program that doesn't abide by its own rules, from the top down, will never work effectively.
- Train and periodically update all company employees about the Whistle Blowing program, disciplinary policy and the company code of conduct.”

Ensuring Effective Oversight over whistleblowing mechanisms



- Build Employee Trust of Internal Policies
- Consider All Sources
- Ensure Adequate Triage
- Enlist the Internal Auditors
- Understand the Entire Process-receipt of new information through remediation.
- Remain vigilant and if a program is not in place at your organization, it might be time to ask why.....

Conclusion



- ❑ Whistleblowing programs require more than setting up a phone line, even if the program is outsourced.
- ❑ Plan, release, monitor and get feedback.
- ❑ Internal Auditors must play a key role.
- ❑ Fraud investigations are best carried out by those experienced to undertake such assignments. Organizations should not expect internal audit's skill set to include fraud investigation.

- ❑ Internal audit should support the organization's anti-fraud management efforts by providing necessary assurance services over internal controls designed to detect and prevent fraud.
- ❑ If circumstances require internal audit to take on an investigatory role, internal auditors should exercise due professional care. Standard 1220) by considering the extent of work needed to achieve the engagement's objectives and the related complexity, materiality, or significance. They should decide if they are best placed to undertake the investigation or whether to engage internal legal counsel, human resources, qualified or certified fraud examiners, digital forensics, or outside legal and investigative expertise.

Conclusions

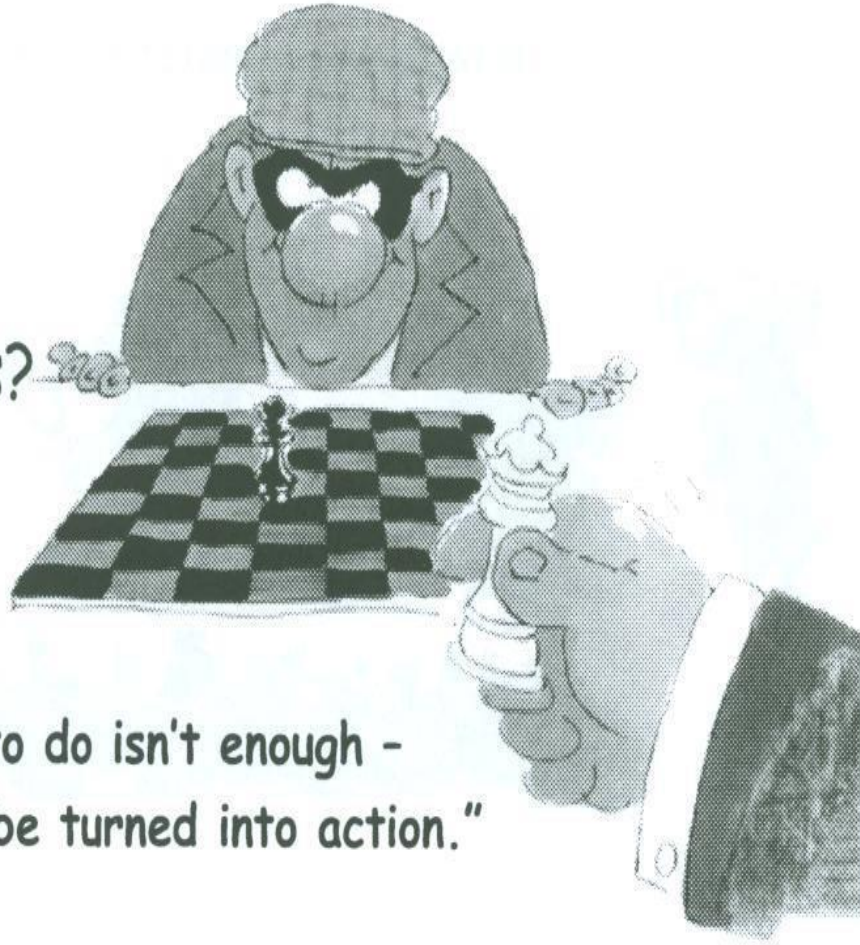


“Internal audit is the primary resource of the Audit Committee in carrying its duties and responsibilities. With those responsibilities increasing and continued pressure from the regulators for financial reporting integrity, a functioning partnership of the audit committee and internal audit is vital”

BellSouth Corporation

YOUR MOVE...

Questions?
Comments?
Observations?



"Knowing 'what' to do isn't enough -
knowledge must be turned into action."

