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Finland

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1 The Decision to Conduct an Internal Investigation

1.1 What statutory or regulatory obligations should an entity consider when deciding whether to conduct an internal investigation in your jurisdiction? Are there any consequences for failing to comply with these statutory or regulatory regulations? Are there any regulatory or legal benefits for conducting an investigation?

In Finland, there is no comprehensive legislation governing internal investigations. However, there are certain regulations that must be followed when conducting an internal investigation. These include employment and data protection laws and certain industry-specific regulations.

Employment legislation contains provisions, e.g., on the equal treatment of employees and grounds and procedure for termination of employment contracts.

Data protection regulations apply to the processing of personal data in connection with internal investigations. The European General Data Protection Regulation (Regulation (EU) 2016/679, “GDPR”) imposes provisions on data processors. Entities must comply with the GDPR at all stages of an internal investigation. Entities must ensure that personal data is processed lawfully and fairly and that there is a legal basis for the processing. The national Finnish data protection legislation in employee matters limits processing of employee personal data only to information that is directly necessary for the employment.

In the financial sector, the Financial Supervisory Authority (“FSA”) is obligated to maintain a system for receiving reports of any suspected violations of financial market regulations. Credit institutions must also have internal channels for reporting suspected violations of the financial market regulations.

Failure to comply with these obligations may lead to civil or criminal liability. Individuals may be sentenced to a fine or imprisonment in case their actions or negligence constitute a crime. A corporate fine may be imposed on a company in case the crime has been committed within the scope of its operations. Administrative sanctions and damages may also be imposed as a result of violations.

1.2 How should an entity assess the credibility of a whistleblower’s complaint and determine whether an internal investigation is necessary? Are there any legal implications for dealing with whistleblowers?

Whistleblowers’ complaints should be reviewed carefully. The

necessary measures depend on the circumstances of each specific case. For example, the credibility and graveness of the complaint should be taken into account, as well as the possible risks involved in case the matter is not investigated. In addition, the availability of resources and possibilities for authorities to investigate should be considered.

The consistency of the facts presented in the complaint, the level of detail provided and other similar complaints are factors that can be taken into account when assessing the credibility of a complaint.

In Finland, there is no comprehensive whistleblower protection legislation. The Finnish authorities rely on provisions in, e.g., employment and data protection laws.

1.3 How does outside counsel determine who “the client” is for the purposes of conducting an internal investigation and reporting findings (e.g. the Legal Department, the Chief Compliance Officer, the Board of Directors, the Audit Committee, a special committee, etc.)? What steps must outside counsel take to ensure that the reporting relationship is free of any internal conflicts? When is it appropriate to exclude an in-house attorney, senior executive, or major shareholder who might have an interest in influencing the direction of the investigation?

The assessment is made on a case-by-case basis. Usually, the client is the entity that appoints the outside counsel. In general, the person with whom the outside counsel communicates is a director or a senior employee in the entity, usually the board of directors and/or the CEO. Possible conflicts of interest should be investigated together with the outside counsel before initiating any investigations or reviews. Findings should be reported only to the client in order to preserve confidentiality.

2 Self-Disclosure to Enforcement Authorities

2.1 When considering whether to impose civil or criminal penalties, do law enforcement authorities in your jurisdiction consider an entity’s willingness to voluntarily disclose the results of a properly conducted internal investigation? What factors do they consider?

In general, courts and authorities can take into account the voluntary disclosure of information when considering the penalties. Cooperation with the authorities might be taken into account as a ground for reducing the penalties.

In competition law, the voluntary disclosure of information to the competition authorities in cartel cases may result in reduction of or immunity from fines (“leniency”). In criminal cases, the offender’s attempts to prevent or remove the effects of the offence or attempts to further the investigation of the offence can be grounds for reducing the punishment. In addition, the FSA may take the cooperation into account when determining administrative sanctions.

2.2 When, during an internal investigation, should a disclosure be made to enforcement authorities? What are the steps that should be followed for making a disclosure?

There are no general requirements on the timing of disclosure, and disclosure is generally not required in relation to past offences. When it comes to ongoing offences, disclosure may be required in certain specific cases, such as in relation to suspicions of insider trading and other offences affecting the stock market.

It should be noted that full leniency in competition law cases is only available to the entity that first reports the competition infringement to the competition authorities and discloses the relevant information.

2.3 How, and in what format, should the findings of an internal investigation be reported? Must the findings of an internal investigation be reported in writing? What risks, if any, arise from providing reports in writing?

There are no specific provisions concerning the format of the findings of an internal investigation. The GDPR requires accountability when processing personal data, which means that organisations must be able to demonstrate their compliance with the GDPR. Written reports leave less room for interpretation and can demonstrate that the relevant legislation has been complied with.

3 Cooperation with Law Enforcement Authorities

3.1 If an entity is aware that it is the subject or target of a government investigation, is it required to liaise with local authorities before starting an internal investigation? Should it liaise with local authorities even if it is not required to do so?

There is no statutory requirement to liaise with local authorities. Nevertheless, voluntary cooperation with authorities might prevent harmful or unexpected measures by authorities, such as search of premises or seizure of assets. Therefore, it is advisable to consider the benefits of such cooperation.

3.2 If regulatory or law enforcement authorities are investigating an entity’s conduct, does the entity have the ability to help define or limit the scope of a government investigation? If so, how is it best achieved?

In general, the authorities will determine the scope of the investigation independently. As stated before, active cooperation with the authorities might have a positive impact on the investigation.

3.3 Do law enforcement authorities in your jurisdiction tend to coordinate with authorities in other jurisdictions? What strategies can entities adopt if they face investigations in multiple jurisdictions?

If necessary, Finnish authorities may coordinate with authorities in other jurisdictions. There are different forms of cooperation based on EU legislation, international conventions and national laws. In case investigations are conducted in several jurisdictions, it is advisable to engage outside counsel in all relevant jurisdictions.

4 The Investigation Process

4.1 What steps should typically be included in an investigation plan?

There are no statutory requirements concerning investigation plans. It is advisable to carefully draft the plan in order to serve the specific purposes of each case. In general, it is advisable to include background information, the scope of the investigation, the individuals involved, the timeline, the research methods, the plan for collecting and processing data and the type of reporting. The objectivity of the investigation and equal treatment of employees should be taken into consideration in the plan.

When planning to establish a general whistleblowing channel within the entity, it may be necessary to negotiate the policy with the employees or their representatives pursuant to the Finnish Act on Co-operation within Undertakings (334/2007, as amended). In addition, some collective bargaining agreements may include more specific obligations.

4.2 When should companies elicit the assistance of outside counsel or outside resources such as forensic consultants? If outside counsel is used, what criteria or credentials should one seek in retaining outside counsel?

It is highly recommended to contact outside counsel who have extensive experience in internal investigations and access to sufficient resources for conducting the investigation.

Outside counsel should be contacted at an early stage, preferably well before initiating the internal investigation in order to ensure best practices are complied with. It should be noted that the documents in the possession of outside counsel are generally protected, whereas the documents in the possession of an in-house counsel do not enjoy legal privilege and may be forced to be released to the authorities or counterparties.

The need for forensic or other special consultants must be assessed on a case-by-case basis.

5 Confidentiality and Attorney-Client Privileges

5.1 Does your jurisdiction recognise the attorney-client, attorney work product, or any other legal privileges in the context of internal investigations? What best practices should be followed to preserve these privileges?

Internal investigations are generally not protected by attorney-client privilege. To preserve privilege, it is advisable to involve outside counsel.

In principle, documents in the possession of outside counsel are protected. Documents and communication from outside counsel to in-house counsel in the possession of in-house counsel are not automatically protected. Whether such documents and communication are protected depends, e.g., on the timing of when they were provided by outside counsel. For example, documents and communications containing general advice provided prior to any investigation by the authorities have a smaller chance of enjoying protection than documents and communications given by outside counsel during a trial or a criminal investigation. The courts will rule on what is admissible as evidence.

5.2 Do any privileges or rules of confidentiality apply to interactions between the client and third parties engaged by outside counsel during the investigation (e.g. an accounting firm engaged to perform transaction testing or a document collection vendor)?

Attorney-client privilege does not apply to interactions between the client and a third party. In case there is a third party involved, it is recommended to direct all communication with third parties through outside counsel.

5.3 Do legal privileges apply equally whether in-house counsel or outside counsel direct the internal investigation?

No. As stated in question 5.1, legal privilege only applies to documents in the possession of outside counsel.

5.4 How can entities protect privileged documents during an internal investigation conducted in your jurisdiction?

It is advisable to use outside counsel and keep the documents in outside counsel's possession. The documents should also be labelled clearly as being under the scope of attorney-client privilege.

5.5 Do enforcement agencies in your jurisdictions keep the results of an internal investigation confidential if such results were voluntarily provided by the entity?

The principle of transparency is applied in Finland. Under the Finnish Act on the Openness of Government Activities (621/1999, as amended), documents disclosed to authorities are in the public domain, unless specifically provided otherwise.

Non-disclosure obligations apply, for example, to documents obtained or prepared for the purposes of ongoing criminal investigations or consideration of charges and documents containing trade secrets. It is important that a request to keep the information confidential is presented to the relevant authority. The relevant authority will then decide if the criteria for confidentiality are met. The parties involved may have a better access to the information, including information that has been ordered confidential.

6 Data Collection and Data Privacy Issues

6.1 What data protection laws or regulations apply to internal investigations in your jurisdiction?

The GDPR applies to the processing of personal data in internal investigations. The government proposal for the new Data

Protection Act and related legislation has been introduced to the Parliament on 1 March 2018 and is currently under discussion in the Parliament. The proposed Act will repeal the current Personal Data Act (523/1999, as amended).

Other national legislation relating to data collection and data privacy issues relevant to internal investigations are the Act on the Protection of Privacy in Working Life (759/2004, as amended) and the Act on Electronic Communications Services (917/2014, as amended).

The Data Protection Ombudsman in Finland supervises compliance with data protection legislation, carries out investigations and issues guidelines.

6.2 Is it a common practice or a legal requirement in your jurisdiction to prepare and issue a document preservation notice to individuals who may have documents related to the issues under investigation? Who should receive such a notice? What types of documents or data should be preserved? How should the investigation be described? How should compliance with the preservation notice be recorded?

There is no legal requirement or general obligation to prepare and issue a notice. The employer has the right to direct and supervise its employees and consequently the employer can issue a document preservation notice concerning its employees. Recipients of such a notice, and relevant documents or data that should be preserved, vary from case to case.

6.3 What factors must an entity consider when documents are located in multiple jurisdictions (e.g. bank secrecy laws, data privacy, procedural requirements, etc.)?

The legal systems and regulations vary from one jurisdiction to another, which is why it is recommended that the entity consults advisors in all relevant jurisdictions.

The GDPR applies to all organisations processing the personal data of data subjects residing in the EU, irrespective of where the organisation itself is located.

6.4 What types of documents are generally deemed important to collect for an internal investigation by your jurisdiction's enforcement agencies?

In general, all written material relating to the specific case may be relevant; for example, emails and other written communication, contracts, records, policies and guidelines, tax and audit reports, etc.

The collecting and processing of documents must be completed in accordance with data protection legislation. For example, the employer can only process personal data that is directly necessary for the employment relationship. This is a mandatory legal provision that may not be waived by the employee. Employees' work-related emails can only be viewed if the national provisions are observed. Otherwise, reviewing employees' emails can constitute a criminal offence. Employers are not permitted to review any employees' personal emails. Therefore, careful assessment of possible legal risks should always be carried out before reviewing any emails.

6.5 What resources are typically used to collect documents during an internal investigation, and which resources are considered the most efficient?

The available resources differ greatly depending on the specific details

and nature of the case. Usually, documents are collected at least from company records, relevant employees and available public records.

6.6 When reviewing documents, do judicial or enforcement authorities in your jurisdiction permit the use of predictive coding techniques? What are best practices for reviewing a voluminous document collection in internal investigations?

Predictive coding techniques are not prohibited and can be used as an option for limiting the scope of information that will be investigated. However, the information the predictive coding is targeted on should be determined beforehand so that the provisions of data protection legislation are fulfilled.

7 Witness Interviews

7.1 What local laws or regulations apply to interviews of employees, former employees, or third parties? What authorities, if any, do entities need to consult before initiating witness interviews?

Employees owe a general duty of loyalty towards their employer. Ultimately, the employer has a general right to direct and supervise its employees and can require them to participate in an internal investigation.

Former employees and third parties do not have a general duty of loyalty towards the employer and are not under the employer's supervision. Thus, they are not obliged to participate in the internal investigations, unless an obligation to participate is separately agreed upon.

There is generally no need to consult any authorities before initiating interviews.

7.2 Are employees required to cooperate with their employer's internal investigation? When and under what circumstances may they decline to participate in a witness interview?

Employees owe a general duty of loyalty towards their employer. The employer also has a general right to direct and supervise its employees and can require them to participate in an internal investigation. A refusal to participate can, in some cases, be deemed misconduct and justify a warning or even dismissal, if the employee has previously received a warning for the same or similar misconduct.

If the interviewee is subject to an ongoing criminal investigation, the right not to incriminate oneself applies in the criminal investigation but not directly in an internal investigation. It is, however, recommended not to require an employee that is under a criminal investigation to be interviewed but instead let the authorities investigate the matter.

7.3 Is an entity required to provide legal representation to witnesses prior to interviews? If so, under what circumstances must an entity provide legal representation for witnesses?

Employers are free to handle internal matters independently without involving legal representation. However, should the employer seek to terminate the employee or to cancel the employment contract, the employee has the right to be heard in the matter. Under such circumstances, the employee has the right to have a lawyer present and should be informed of this right.

7.4 What are best practices for conducting witness interviews in your jurisdiction?

The interviews should be followed through objectively and documented in writing. All the relevant parties should be heard and the order, in which the parties involved are heard, should be considered.

It is recommended to have the outside counsel present during the interviews. In addition, it is advisable to remind the interviewees of non-disclosure of the issues related to the interview.

7.5 What cultural factors should interviewers be aware of when conducting interviews in your jurisdiction?

Interviews conducted in a neutral and friendly atmosphere usually lead to interviewees sharing information more openly and may encourage employees to report internally before reporting to authorities. In general, interviewees are more willing to cooperate when the background and objects of the investigation are explained to them.

7.6 When interviewing a whistleblower, how can an entity protect the interests of the company while upholding the rights of the whistleblower?

In Finland, there is no specific legislation concerning this issue. In general, the interviews should be conducted in a fair and equitable manner. In order to reach the best possible outcome, the whistleblower should be given an opportunity to make his/her complaints freely and the complaints should be processed in an appropriate manner and documented.

7.7 Can employees in your jurisdiction request to review or revise statements they have made or are the statements closed?

The employees have no general right to revise documents drafted in connection with internal investigations, but they do have the right to review their own statements. In order to avoid misunderstandings and ensure the objectivity of internal investigations, it may be beneficial that the records from internal interviews are shown to the employees for their approval by way of, e.g., a signature. There is, however, no obligation to provide the employee with physical copies of notes from an internal interview.

7.8 Does your jurisdiction require that enforcement authorities or a witness' legal representative be present during witness interviews for internal investigations?

There are no such requirements.

8 Investigation Report

8.1 How should the investigation report be structured and what topics should it address?

The structure of the investigation report depends on the circumstances of each case. In general, it is recommended that the report includes background information, all relevant information gathered during the investigations, description of the process and the main actions taken during the internal investigation, the findings and the conclusions made.

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