

# EXPERT GUIDE

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## Strategic Remedies for Corporate Fraud Victims: What to do When Fraud Hits Home *By Olivia G. Robinson*

- An air-tight investment dissolves in a Ponzi scheme.
- A trusted employee siphons off your profits in cooked books.
- A new consultant disappears with your client list.
- A cybercrime ring targets your company.

Corporate fraud—internal and external—is widespread, with severe bottom-line consequences that can put an entire organisation at risk. These are crimes that often leave victims with little recourse. In a 2013 survey by the Association of Certified Fraud Examiners, 58% of the organisations that reported being victimised never recovered *any* of their losses, and only 14% recovered fully.

But with the appropriate strategy, starting from the time the crime is discovered, it may be possible to limit or even recoup losses, see that the perpetrators are punished or, when necessary, to negotiate with the perpetrators for partial recovery of what was stolen.

It's common to be shocked, angry and frustrated at being ripped off, but it's imperative to proceed thoughtfully, with a solid plan and the help of experienced professionals. Minimising losses takes time, leadership, financial resources and support.

### If you suspect fraud, take these three steps immediately

- First, report the incident to the police, appropriate law enforcement or regulatory agency. Some insurance claims require a police report.

- Secure the office or facility where the incident occurred, particularly computers, cell phones or other media devices, financial records and proprietary documents. Restricting access may mean everything from changing the locks to hiring professional security guards.

- Get a reputable attorney involved, whether it is the firm's in-house counsel or an outside law firm. Not only does the attorney offer "privilege" to any communication about



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the situation, but he or she can help to guide the process going forward. An attorney knowledgeable about fraud, white collar crime, business or financial litigation may be essential.

### **Next: Figure out what happened**

Your investigation of the crime begins at this stage with two simple-sounding, but often daunting, steps: 1.) Determining who was involved in the fraud and 2.) Learning what the fraud entailed. Recovery of assets hinges on what emerges here.

### **Question 1: Who is the bad guy?**

Was this an inside job, perhaps a bookkeeper keeping a fake set of accounts? If so, was she acting alone? Or, were her actions part of a larger scheme involving the purchasing department and a few key suppliers?

Was the crime perpetrated by outsiders? Perhaps they may be known to you. Or increasingly likely, they may be part of a more hidden web of criminals and enterprises. If you have been the victim of hackers or a cybercrime, it may be extremely difficult to iden-

tify the people behind the scam and their location. But accurately identifying the perpetrator and accomplices is vital to your efforts and ultimate success.

### **Question 2: What is the scope of the scam?**

Was this a one-time event? Or is this an elaborate, highly-complex financial fraud involving employees, consultants and vendors operating on a model perfected over time?

Is it a domestic fraud or does it involve international collaborators? Answers to these questions must be pieced together from a variety of sources. (If the fraud is found to have international components, the task becomes even more daunting.)

### **Get appropriate help**

A private investigative agency can be highly effective in helping you to differentiate suspicions from reality, pinpoint the key players and document their actions. Depending on the geographic location, licensing requirements, local and national laws, private investigators have a range of

investigative tools at their disposal. These may include the use of proprietary databases available exclusively to private investigators as well as public records such as court filings, recorded documents and property title records.

As well, investigators often turn to social networking sites for information, particularly in determining the interrelationships of various parties, and they frequently make strategic use that classic tool, the telephone.

Their findings provide a framework of understanding that can then be corroborated by forensic accountants, computer forensic experts, and other investigative resources.

It is important that the private investigator work directly with the attorney hired to pursue the matter.

### **Now begin to develop a strategy for recovery**

Once you have identified all of the parties involved and the scope of the fraud, you can develop a game plan to recover your losses.

Your investigative team can help you

identify facts that may benefit negotiations or influence collection of assets. For example:

- If the perpetrator is not acting alone, who are his accomplices? How many others have complicit relationships or business relationships with him?
- What assets do those parties have, so that you can be paid back? These may be in the form of bank accounts, real property, businesses or other financial interests.
- Are there liens and judgments, or other factors that may affect collections? For example, it is important to identify any tax liens that will take precedence over any subsequent claim you may bring.
- Is there a pattern of behaviour that can be documented?
- Have others been scammed by the same parties? What did these victims do about it?
- Are they willing to cooperate with you now in bringing the perpetrators to justice? This could take the form of a class action lawsuit, or packaging your combined documentation to turn over to the authorities in a criminal referral.

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- What is the litigation history involving the perpetrators? What patterns emerge? What outcome or type of settlement has come from these cases?

### Possible Options

The facts and documentation that you and your team are able to assemble will determine the options that are available to you. These can include: filing an insurance claim for your losses or filing a civil lawsuit.

You may also decide to package the documentation and turn it over as a criminal referral to law enforcement or an appropriate regulatory agency, such as the Federal Bureau of Investigation, attorney general or district attorney. The jurisdiction will determine whether this is feasible, as some authorities will only examine cases that exceed a certain dollar threshold or meet other selection criteria, such as the type of case.

You can be certain that if you do *not* amass and present convincing documentation of the crime to law enforcement officials, it's highly unlikely

ly for any criminal investigation to proceed. You and your investigative team will lay the foundation for any case that goes forward.

Finally, you may decide to do nothing. There are many reasons for choosing this alternative. You may not want to invest the money and time to pursue or root out the criminal. You may be concerned about disrupting your business, or fear negative media attention and lost reputation.

Of course, if you do nothing, it's likely that the criminals who targeted you will be free to target others or even, in a slightly different guise, to circle back and victimise you again.

### Coordinated effort required

There is no panacea for dealing with fraud. Any attempt to find a satisfactory remedy will take a dedicated and persistent effort. The leadership required to oversee the selected strategy must often be coordinated with company executives, attorneys, investigators, law enforcement and perhaps other victims. Make fraud-prevention and response proto-

cols part of your strategic planning. Your preparations may have far reaching consequences.

**Olivia Robinson** *investigates fraud and white collar crime. She has conducted critical, time-sensitive investigations since 1982. Ms. Robinson heads up a licensed private investigative agency comprised of a multidisciplinary team of investigators who are uniquely able to provide actionable results, using a combination of investigative techniques.*

*She has helped clients discover and recover from cases involving Ponzi schemes, complex financial fraud, insider trading, industry-wide fraud scams, global cybercrime, municipal fraud, identity theft, hedge fund and investment scams.*

*She has lectured widely and written on the subject of fraud, white collar crime, and developing winning strategies for the recovery from both. Her book Hoodwinked: Falling for the Con will be published in 2015. This book follows the trail of invented identities, sham companies, phony money and how every day, smart people and organisations get sucked into a parallel world of seductive deals and scams.*

*Ms. Robinson has held positions on the boards of the Association of Certified Fraud Examiners, Association for Corporate Growth, and the Association of Strategic Planning. She is an active member of the California Receivers Forum, California Association of Licensed Investigators, Women's White Collar Defense Association, Association of Business Trial Lawyers, and other professional organisations.*