



## **Whitepaper**

**The recovery of stolen assets**

**Multidisciplinary approach of forensic investigations**



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## Summary

Complex private forensic investigations rarely lead to recovery of the missing funds. Due to their limited approach, these investigations frequently do not provide more information than partially clarifying the body of facts. Complex investigations have multiple sub-problems. Hence, an integrated, multi-disciplinary approach is necessary to gain proper insight into the body of facts and recover the missing funds. Any professional forensic service provider who maintains a one-sided approach towards complex investigations, is not acting in the interests of his or her client and can even be blamed of professional negligence. This white paper deals with the complexity of forensic investigations, the backgrounds of the forensic service providers in relation to the objective, the design, the performance and possible results of forensic investigations.

## Introduction

In recent years certain incidents in the area of financial-economic criminality occurred in the Netherlands and other countries, which have damaged the image of the institutions concerned. The consequences included falling share prices, negative press coverage, lawsuits from angry shareholders, hefty fines for supervisors, and managers who were prosecuted by the Public Prosecution Service. Ahold, Akzo Nobel, Imtech, Siemens, Bank of New York, JP Morgan, Philips Pension fund, Vestia and Rochdale are all examples of institutions where managers favoured themselves or others, where annual financial statements and other documents were compiled contrary to the truth and/or where people acted in violation of laws and regulations. In almost all of the aforementioned cases, the Public Prosecution Service and supervisors instituted investigations. The institutions also initiated forensic investigations by themselves.

Based on the lawsuits filed by shareholders, dismissals of managers and the fines imposed, it becomes apparent that managers, supervisors and stakeholders are not always aligned on both the prevention of and approach towards incidents and the related objectives, as well as the approach and the envisaged results of private forensic investigations. It can be suspected that this expectation gap is largely attributable to clients' and forensic service providers' insufficient communication and unfamiliarity with the nature and scope of the formulated objectives, to existing laws and regulations for forensic service providers and to the options for approaching and executing forensic investigations. This white paper is an attempt to close this gap.

## Complex cases

The incidents that received much public attention in recent years, frequently concern complex cases. In these cases, a variety of irregular events occurred over a long period of time. Often, significant financial interests and institutional reputations are involved. Any issues could have a significant impact on the entire institution and the investigation is frequently in conflict with special events, such as releasing annual financial statements, take-overs and flotation.

Legal, financial, publicity, organisational and investigative-technical issues, generally present themselves unexpectedly and very quickly in case of establishing potential irregularities. Who is involved in these possible irregularities? What would the scope be? How can further damage be prevented? Can a significant part of the potentially missing funds be recovered? Why did the existing checks and balances not work? Should the internal employees be suspended during the investigation? Should reports be submitted to the Public Prosecution Service? Should a press release be issued with regard to price-sensitive information? What impact do the irregularities have on the previously published and yet to be published annual financial statements? In short, a range of issues; each with its own dimension and timeline. Some of these concern the past and are recorded in a variety of both public and private documents. Other issues are more current and cannot be traced back to documents such as records and annual financial statements.



## **Interim interests**

Each of the aforementioned issues has a self-interest, poses a new question, requires a different type of investigation and has its own timeline. Complying with all interim interests is impossible, because many interests conflict with each other. This in terms of time, attention, but especially financial consequences and consequences pertaining to reputation. Is preference given to the interests of the institution, those of the employees and external parties involved in the incidents or those of the stakeholders? Can individual persons concerned remain suspended during a private forensic investigation and/or criminal investigation, or should their employment contract already be terminated? Should the press already be informed of the content or would it be better to find out where a significant part of the missing funds has gone and who the people involved are first? The answers to these questions differ from one situation to the next.

## **Importance of establishing terms of reference and three objectives**

Clients who have to deal with incidents in the field of financial-economic criminality, must deal with a variety of issues and related interim interests presented to them. It is important to formulate objectives for the entire forensic investigation that provide direction to the work of the professional forensic service providers. Objectives ensure that the entire investigation:

1. Retains focus and control,
2. Is executed effectively and efficiently and
3. The financial damage and damage to the institution's reputation remain limited.

When objectives are lacking, there is a risk of a single battle being won, but the war being lost.

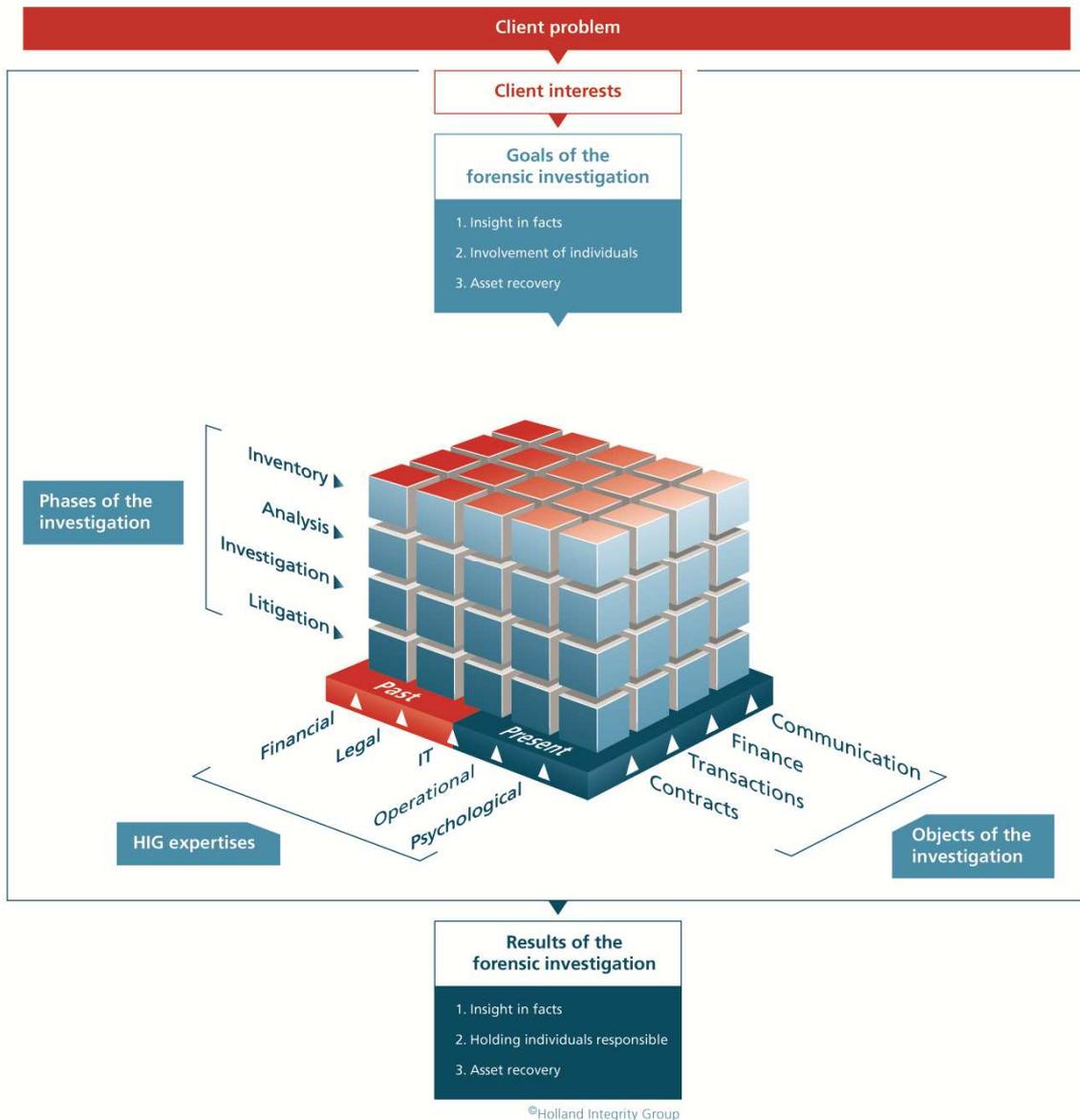
In general, there are three objectives that have to be formulated concerning forensic investigations:

1. Clarifying the facts and events.
2. Providing insight into the backgrounds of the individuals who were involved and can be held responsible for the problems.
3. Recovering damages, stemming from the established irregularities, from the individuals responsible.

The last objective frequently boils down to recovering the funds that the individuals involved appropriated by means of unlawful actions. Institutions may, for undisclosed reasons, always decide not to include the third objective, and possibly also the second objective, when confirming the assignment. The only remaining question in this case is whether or not they are depriving themselves or their stakeholders and if they can motivate these choices in retrospect. In our experience, the professional forensic service provider can also help the client by extensively informing him of the (im)possibilities of the investigation and the realization of all the aforementioned objectives.

Aforementioned objectives provide direction to the design and execution of the work of the professional forensic service provider who is tasked with executing the investigation. In the framework of this white paper it is assumed that, for the purpose of the desired independence, an external professional forensic service provider will execute the forensic investigation. This white paper does not deal with the role of internal (forensic) professionals.

The diagram below visualizes the process of problem identification and clarification up to the settlement of the case. Omitting certain parts from the cube will lead to a more limited approach and a more one-sided final result.



## Various dimensions

There are various dimensions associated with approaching and executing investigations into complex cases. The dimensions that can be distinguished, in case of forensic investigations, are:

1. The investigative phases.
2. The expertise required to investigate the sub-problems.
3. The time dimension.

### 1. The investigative phases

The investigative phases - assessment, analysis, investigation and litigation – concern the phases that the investigative process consists of.<sup>1</sup> These phases can be run through successively and multiple times during a forensic investigation. New information, collected at a later stage during the investigative or litigation phases, may in fact lead to a new assessment, analysis and investigation and could be used in other legal



proceedings. The litigation phase can be directed towards three aspects, namely by means of legal proceedings:

1. Gathering data.
2. Identifying liable individuals and/or legal entities.
3. Attaching assets.

## **2. The expertise**

The expertise concerns financial, legal, operational, and technical expertise. Expertise that is required to understand and be able to investigate the established problems. Financial expertise is required to investigate financial problems in, among others, the administrative organization, related financial systems and the information included in them about the institution and other parties involved. Legal expertise is directed at clarifying the legal structure of the institution and other parties involved, contractual responsibilities and competencies of those involved and agreements with internal and external parties involved. Technical expertise is required for investigating automated and other technical systems. Operational expertise is necessary for mapping or verifying the facts, circumstances and behaviours of internal and external individuals involved.

## **3. The time dimension**

The time dimension concerns the duration of the investigation and the time spent on legal procedures. Some procedures, such as interlocutory proceedings, can be settled relatively quickly, while a criminal report can lead to a prolonged investigation and prosecution process. The choices made during a private forensic investigation for deploying the various investigative resources and legal procedures, are also largely dependent on how much time these require.

## **'Playing' with combinations**

In case of private forensic investigations, it is important for the professional forensic service provider to be able to 'play' with various combinations of the three dimensions 'investigative phases, expertise and time', because certain information can sometimes be obtained in different ways. An important part of forensic investigation concerns being able to gather investigative data in different ways. Investigative options, costs, time and probability of success all play a role when determining the different investigative routes. Bank statements can be handed over voluntarily by a party involved. A public prosecutor can, after a statement by an aggrieved party, request the bank for details with a warrant for extraction. Or the curator can obtain the bank details in the framework of bankruptcy. The first option can sometimes be executed relatively quickly and cheaply. The second and third options require more time and costs throughout.

## **Scope of expertise**

The quality of forensic service providers is, to an important extent, dependent on their pre-training, experience and skills. The assumption that every forensic service provider covers the entire playing field, is incorrect. Every forensic service provider approaches a complex issue in the field of financial-economic criminality based on its own knowledge, experience and insights and, by definition, has multiple blind spots, because he or she lacks knowledge and skills of other disciplines. During the forensic investigation, it is crucial for every service provider to realize the limits of his own professional knowledge and experience. Unfortunately, things frequently go wrong in the forensic investigative work at this level. In disciplinary proceedings and in practice it often becomes clear that professional (forensic) service providers regularly put a foot in it concerning sub-fields of the forensic investigation.<sup>2</sup>



## **Integrated approach to forensic investigations**

To be able to effectively efficiently and adequately execute forensic investigations and to be able to realize the three objectives mentioned, it is important that the investigations take place in an integrated way in the following four sub-fields, namely:

1. The objectives
2. The expertise.
3. The legal playing field.
4. The geographical areas.

## **Integration of objectives**

The three objectives for forensic investigations, mentioned earlier, should be approached interdependently and in the sequence mentioned. It is not possible to hold individuals liable and recover damages without having a reliable insight into all relevant facts and events. The actual recovery of damages from individuals involved is also only possible if there is clarity about the individuals' financial position and their legal involvement and responsibilities for the irregularities concerned.

## **Simultaneous and integrated**

However, the above does not mean that working out the three objectives should take place sequentially. On the contrary, it is necessary to work out the objectives in an integrated manner and simultaneously. This to ensure that the forensic investigation is executed adequately and dynamically in order to be able to realize the three objectives. It is unwise and ineffective to, start thinking about recovering damages and attachment only after the administrative investigation and obtaining sentences in the first and/or second instance. It is for this reason that the necessary legal options have been included in the legislation to attach evidence or assets based on suspicion, or to bring the case to the attention of a public prosecutor. In practice, it seems as if forensic investigations and the legal proceedings stemming from them are still frequently approached sequentially. This has a negative impact on the final result.

## **Importance of a multi-disciplinary approach**

A complex case with multiple issues requires a multi-disciplinary approach, in which multiple experts cooperate to unravel and map the complex reality by using, among others, documents, statements and administrative or technical records. These experts are frequently forensic accountants, lawyers, former police officers, IT-specialists and forensic psychologists, but other specialists can also contribute to the components.

In complex issues, in which only one of the said experts is deployed in a single or multiple phase(s), there is a risk of the investigative data not or incorrectly or insufficiently, being gathered, evaluated and examined. There is a risk that no or a one-sided picture is presented of certain events, where relevant aspects are disregarded. The lack of various experts approaching the objectives simultaneously, does not contribute to the final result.

## **International character**

Investigations into financial-economic criminality are almost always international in nature. The revenues from illegal actions are frequently transferred to bank accounts abroad, making it more difficult for the aggrieved party(ies) to attach and recover these revenues. This means that the forensic investigation, at international level, should take place in a multi-disciplinary and integrated way. Moreover, it is important that the forensic service provider knows how he/she can use the legal options to gather information and



attach the various asset components in the different foreign legal systems. However, international investigations can be difficult for various reasons. Practical and legal barriers can be formed by language, (lack of) information sources and other laws and regulations to gather information, finding the liable parties involved and attaching the assets.

## **Accuracy**

It is obvious that forensic investigations have to be performed accurately. This should be guaranteed as of the first contact with the client and concerns determining the objectives of the investigation, the planning and execution thereof. It was explained earlier on that it can be expected from a professional forensic investigator that he/she is capable of grasping and managing the dimensions of the case adequately. There should be an accurate alignment of the interests of the client and other parties involved, the objectives of the investigation, the activities to be performed and the experts to be deployed in the process. A mismatch between the components can influence the result negatively.

## **Conflict of Interest**

The presence of conflicts of interest is inherent to forensic investigations. These investigations frequently take place following indications of irregularities, in the course of which one of the parties possibly benefited himself at the expense of another party. Forensic reports are frequently used to clarify the facts and the circumstances about which the client and the persons connected to the irregularities differ in opinion. The work of the forensic service provider is therefore scrutinized. When executing forensic examinations, he or she should follow the 'rules of the game'. It is of great importance to the forensic service provider to exercise care in his activities. As part of the defence strategy of the individuals concerned, there is a real chance that the professional forensic service provider will legally be held accountable for the activities performed. Besides, the focus is rarely on the professional forensic service provider's substantive findings, but more on whether or not the rules of the game were followed. The accountability of the professional forensic service provider can be tested in the form of a civil case. If the investigation was executed by a (forensic) accountant or a lawyer, there is also the option of instituting disciplinary proceedings against this professional forensic service provider. If a professional forensic service provider is held legally accountable, he/she, as it were, serves a double interest. He/she defends his own actions, but also the interest of his/her client. The professional forensic service provider's client, in such cases, therefore has a so-called derivative interest. After all, if the judge should find the professional forensic service provider is guilty of culpable conduct in executing his investigation, the client may incur derivative damages. The principal question is the extent to which the professional forensic service provider's end product upholds this service provider's conviction of culpable conduct.

During the past few years professional service providers were summoned to appear in court more than once. It is quite understandable, as the parties often have significant interests. Civil and disciplinary cases also exist where professional forensic service providers were the worst off. In many cases, that did not necessarily need to happen. This is because the generally accepted and assumed rules were not followed.

## **Professional negligence?**

Many professional forensic service providers are knowledgeable and experienced in their own field of expertise. However, approaching complex cases in the field of financial-economic criminality requires more from a forensic professional. It also requires insight into the limitations of his or her own expertise and the possibilities of other fields of expertise. Unfortunately based on the many disciplinary proceedings and a the limited results of forensic investigations, it seems that many professional service providers are 'overconfident'. They wrongly assumed that they, using their own knowledge and experience, were capable of executing forensic investigations into complex cases. Many service providers do not realize the added



value of a multi-disciplinary approach to forensic investigations, the necessity of an integrated approach towards the objectives formulated by the client, or that there could be a lack of required knowledge and experience in the field of forensic investigations. This gives rise to the question whether or not these service providers are being professionally negligent towards their clients when accepting assignments for forensic investigations, notwithstanding a lack of a professional-critical attitude with respect to their own abilities.

## Summary

This white paper deals with the complexities of cases in the area of financial-economic criminality, the various issues that descend on the institution when establishing incidents and related interim interests. Incidents, legal proceedings, dismissals and penalties expose the fact that managers, supervisors and other stakeholders are not always aligned in respect of preventing and approaching incidents and the objectives of and approach to private forensic investigations. Many forensic investigations get bogged down in the partial clarification of the body of facts. Other aspects, such as finding those responsible and recovering the missing funds hardly seem to play a role.

The accurate, adequate, effective and efficient execution of a forensic investigation is important for the institution's reputation and its financial interests – besides providing stakeholders with the comfort that their financial and other interests are in good hands. It is therefore necessary to formulate objectives that will contribute to protecting the interests of the institution and the stakeholders, which are:

1. Clarifying the body of facts.
2. Giving insight into the backgrounds of those responsible.
3. Recovering the missing funds.

In order to achieve objectives, it is necessary that the forensic investigation is approached in a way that integrates all the components. This really means that the objectives have to be approached in mutual relationship and simultaneously by a multi-disciplinary team that is capable of gathering information, executing legal proceedings in the various jurisdictions and booking accurate results.

An integrated, multi-disciplinary approach of forensic investigations can lead to recovery of the missing funds.

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### **About Holland Integrity Group (HIG)**

Holland Integrity Group is the leading independent investigation and advisory firm supporting profit and non-profit organisations in increasing their resilience to misconduct and violations of integrity, in investigating possible complex fraud and in the recovery of missing assets.

Website: [www.hollandintegritygroup.nl](http://www.hollandintegritygroup.nl)



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<sup>1</sup> The investigative process can be subdivided in various ways. Some investigators see the analysis and investigative phases as a single phase, but distinguish a separate reporting phase. In the framework of this white paper, we find it important to make a distinction between the analysis and investigative phases. In view of the fact that, during an investigation, we frequently compile multiple reports for various purposes, we do not recognize any separate reporting phases.

<sup>2</sup> Disciplinary proceedings for accountants, Prof. H. Blokdijk and J. Achten, 2011.