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*Fraud*

# Preparing a fraud response plan

Recommendations for directors  
and members of supervisory bodies

February 2022

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#### **About this publication**

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# Contents

Foreword.....	4
Introduction.....	4
Recommendations for a fraud response plan to be prepared by the organization.....	9
1. Lead role and coordination.....	9
2. Securing data.....	10
3. Investigation of (suspected) fraud.....	11
4. Internal and external communication, including dealing with the media .....	14
5. (Temporary) measures prior to and during the fraud investigation in respect of the parties involved.....	16
6. Follow-up based on the outcome of the fraud investigation.....	17

# Foreword

Fraud is a significant social problem that has a severe and adverse financial impact on citizens, organisations and the government. Fraud occurs in both small and large organisations. In addition to causing financial damage, fraud can prevent you from achieving your business goals and jeopardise the going concern of your organisation. In addition, fraud damages the integrity of your organisation and may potentially have a detrimental effect on your organisation's image.

So what should you do if your organisation is confronted by a case of (suspected) fraud? A situation that often involves strong emotions, uncertainty or even panic. A fraud response plan that has been prepared in advance by the organisation can help. This brochure contains useful recommendations to help organisations draft a fraud response plan. A combination of a roadmap and an action plan, which indicates how you can act as a director or member of a supervisory body in the event of suspected fraud. A plan of this nature helps you act appropriately and expeditiously to minimise damage to the organisation, in all its forms. The Fraud Work Group's objective in publishing this brochure is to provide recommendations to directors and members of supervisory bodies on how to draw up a fraud response plan.

However: prevention is better than cure. So, in addition to this NBA brochure, the Work Group has published a second NBA brochure called "Fraud Risk Management, Recommendations for directors and members of supervisory bodies." As a director or member of a supervisory body, you can use the recommendations on fraud risk management to concretely implement risk management, and prevent and detect fraud and corruption within your organisation. The recommendations also help you engage in frank and open discussion with your accountant.

The Work Group hopes that more effective collaboration between directors, members of supervisory bodies and accountants in respect of fraud risk management and fraud response will more frequently prevent fraud within organisations, and lead to early detection and an adequate response.

Both brochures have been written in collaboration with more than 60 stakeholders, including a large number of interest groups, directors, supervisory bodies and shareholders of both small and large organisations.

The Fraud Work Group is very grateful to all stakeholders for the input they provided as we prepared the recommendations in both brochures.

Thank you for your contribution. Fraud Work Group



*What should you do if your organisation is confronted by a case of (suspected) fraud?*

*A situation that often involves strong emotions, uncertainty or even panic. A fraud response plan that has been prepared in advance by the organisation can help.*

# Introduction

Financial-economic crime, including fraud, is a significant social problem that can have a severe and adverse financial impact on citizens, organisations and the government. Fraud involves: 'the act of intentionally misleading somebody to obtain an unlawful or illegal advantage.' Many organisations endeavour to prevent fraud, however, because fraud always involves intentional misrepresentation, it is difficult to prevent and detect.

What should you do if things go wrong, or put another way, how should you act when you suspect fraud? Organisations are usually not yet sufficiently prepared for dealing with (suspected) fraud. Obviously, outside specialists can provide assistance. However, the organisation's interests are best served by retaining control over the procedure to the greatest extent possible. A fraud response plan helps you achieve this. A plan of this type helps you answer specific questions such as:

In other words, a roadmap of sorts. How you use it differs from case to case. In this brochure, we provide recommendations on how to prepare a fraud response plan, in the knowledge that such a plan need not include detailed elaboration. The situations that occur in practice are unpredictable and an organisation needs to have the freedom required and be prepared to respond appropriately to the case in question, even if that means deviating from the steps outlined in a fraud response plan.

In other words, a fraud response plan is primarily a tool that provides recommendations for the organisation in the form of an adequate and process-oriented approach to investigating suspected fraud, following up on findings and resolving the matter. All with the objective of minimising damage to the organisation and its stakeholders

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*What is expected of an organisation when fraud is suspected?*

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*What actions can the organisation take?*

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*Which parties can you involve when addressing the matter?*

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*Which parties should be informed?*

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*What approach should be adopted in respect of those believed to be involved?*

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*Who investigates the case of suspected fraud?*

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*Who assumes the lead role and coordinates follow-up and resolution of the case of suspected fraud on behalf of the organisation?*

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# Recommendations for a fraud response plan to be prepared by the organization

The recommendations for preparing a fraud response plan are grouped in six focal areas:

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1. Lead role and coordination

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  2. Securing data

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  3. Investigation of (suspected) fraud

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  4. Internal and external communication, including dealing with the media

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  5. (Temporary) measures prior to and during the fraud investigation in respect of the parties involved

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  6. Follow-up action based on the outcome of the fraud investigation
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In addition to management, employees can also be involved in the fraud response procedure, in the lead role, for example, or as a coordinator. Recommendations are also made to the supervisory body. All the recommendations are appropriate to the role and duties of directors, the employees involved, or the members of supervisory bodies.

Adequate fraud response is important for every organisation and the recommendations are based in part on international standards, including the COSO Fraud Risk Management Guide and the EU Whistleblowing Directive.

As a member of a supervisory body, you can actively monitor management's implementation of the recommendations and provide substantive input where necessary and possible. Not all organisations have a supervisory body. If your organisation does not have one, you may be able to implement the recommendations in an alternative manner as a director or have them implemented by a different body within your organisation.

The recommendations are relevant to all organisations, regardless of size. But, obviously, they must be implemented specifically, taking into account the complexity and size of the organisation.

# 1. Lead role and coordination

Acting quickly and appropriately when fraud is suspected is crucial. Often an impasse arises when it is not immediately clear who will assume the lead role and coordinate follow-up actions and resolution in a case of suspected fraud. Clarify this in advance and document the agreed approach and responsibilities in the fraud response plan, including who specifically does what. Think of the fraud response plan as a guideline that can be flexibly applied to any situation.

1. As management, in consultation with the supervisory body, formulate and document agreements on who will assume the lead role and coordinate follow-up actions and the resolution of a case of suspected fraud involving employees (employee fraud) and a case of suspected fraud involving management/the executive board (management fraud).
2. As management, in consultation with the supervisory body, formulate and document agreements about who will assume the lead role and coordinate actions, and describe the procedure to follow in the event of a reported issue (submitted by a whistleblower), as well as how to communicate with and protect the whistleblower/person submitting the report.
3. Ensure that the person who assumes the lead role and arranges coordination has an adequate mandate and powers to take action when following up on and resolving cases of both suspected employee fraud and suspected management fraud. In the event of suspected management fraud, the supervisory body assumes the lead role and coordinates in this regard.
4. Make agreements and stipulate that the supervisory body must be informed immediately in situations of suspected management fraud. As part of this process, additionally consider the importance of and need for external notifications; to external supervisory bodies, for example, or customers and suppliers when corruption is suspected.
5. Ensure that the person who assumes the lead role and arranges coordination is given sufficient time and resources to adequately follow up on suspected fraud and can rely on assistance from within the organisation if required.
6. Involve the supervisory body in drafting a fraud response plan and establish reporting lines to keep the supervisory body informed. The supervisory body plays a leading role in determining these reporting lines.
7. As management, accept responsibility for drawing up the fraud response plan and approve it.
8. When fraud is suspected, inform the accountant at the earliest possible stage.
9. Inform the accountant about the fraud response plan and put fraud on the agenda for the periodic meetings between management, the supervisory body and the accountant.
10. Agree with the accountant how and by whom within the organisation or supervisory body the accountant is informed of a case of suspected fraud (employee fraud, management fraud, etc.).
11. Make concrete agreements with the internal audit team (if applicable) about their role in fraud investigations to clarify if and how internal auditors can provide support. Internal auditors have a good understanding of the organisation and control environment, including cultural and behavioural aspects.
12. If fraud is suspected, involve an appropriately qualified lawyer at the earliest possible stage and seek his/her advice regarding the next steps the organisation should take.
13. Formulate and document agreements regarding which authorities and external parties will cooperate from which time and in which way.
14. Formulate and document agreements about the time when and manner in which the organisation cooperates with investigative bodies (such as the Fiscal Intelligence and Investigation Service, the police and the Public Prosecution



## 2. Securing data

When fraud is suspected, it is important to take action to secure the organisation's data. The objective is to prevent the deletion or disappearance of information that is important to the investigation, or the loss of meaningful evidence. Clarify this in advance and document the agreed approach and responsibilities in the fraud response plan, including who specifically does what.

Service) and/or external supervisory bodies (such as the AFM and DNB), and the insurance company. Seek advice from a knowledgeable legal professional in this respect.

1. Prevention is better than cure: set up data management in the organisation in such a way that specific (fixed) procedures can be triggered in the event of suspected fraud. To do this, create the required roles and assign relevant responsibilities within the organisation.
2. Make agreements on procedures for securing data with the external IT service provider (if data is stored in the cloud with an external IT service provider).
3. When fraud is suspected, secure data (digital information and printed data) as early as possible to prevent data loss. And consider whether employees who are suspected of possible involvement in fraud should be immediately denied access to the systems.
4. Explain at the earliest possible stage the purpose of any investigation into secured data (digital information and printed data). This ensures - as much as is reasonably possible - that the organisation can apply the principles of proportionality and subsidiarity early on when securing data.
5. The applicable laws and regulations regarding personal data protection must be complied with when securing data.
6. When securing data, external specialists can be brought in who, possibly in collaboration with the organisation's IT staff, carry out the tasks required to secure the data and transfer it to a secure environment. Have this work done by appropriately trained specialists who know how to maintain the authenticity and integrity of the data when securing it.
7. In addition to digital information and printed data (workplace research), specific items of hardware, such as laptops, mobile phones, cameras, data carriers, printers, etc. should also be secured. Make agreements in this respect and document them.
8. Take action to ensure that a working backup functionality is set up for the (financial) administration and email correspondence, together with an export function for retrieving mutations and metadata associated with those mutations. Ask your software vendor about this.
9. Take action to ensure that the organisation has access at all times to reliable records relating to its historical payment transactions. Organise this in advance and not just when fraud is suspected. Check this point with your banks and financial institutions.

### 3. Investigation of (suspected) fraud

An investigation into a case of (suspected) fraud sometimes has a major impact on and consequences for the organisation, the person suspected of fraud and also the person who reported the matter. So an investigation of this nature must be conducted with extreme care. Suspected fraud can be reported in many ways, i.e. via a whistleblower policy or via a hotline. Make sure in advance that clear agreements are made about the action to be taken and document them in the fraud response plan.

1. Ensure adequate protection for the whistleblower before having the report assessed for validity and authenticity (orientation phase). Also, take all possible action to keep secret the identity of the whistleblower.
2. If, on completion of the orientation phase, the report provides sufficient grounds and justification for suspecting fraud, formulate an investigative objective. What does the organisation want to achieve with the investigation? In doing so, also consider possible legal steps that can be initiated after completing the investigation.
3. Inform the accountant prior to formulating the investigative objective. Give the accountant the opportunity of providing input on the investigative objective, scope, and breadth of the fraud investigation that is to be conducted.
4. Limit the number of people who know about the situation (circle of trust) to the minimum possible.
5. In the event of suspected management fraud, the supervisory body should be mandated to consult or engage a lawyer other than the in-company lawyer, or the normal lawyer who defends the interests of the organisation's directors, in order to ensure impartiality. This mandate should be provided for in the fraud response plan in advance.
6. Consider having the (fraud) investigation conducted by an investigation team that specialises in and is therefore qualified in this area, or by external fraud investigators (e.g. a forensic accountant, a firm of investigative consultants, a certified fraud examiner, or other specialists). If fraud of some magnitude that has an impact on the organisation is suspected, engaging independent investigators is essential to ensure that the results can be used in any subsequent legal procedure.
7. Also involve one or more lawyers, who specialise in the relevant areas of law (usually labour law, corporate law/civil law and/or financial economic criminal law) in the (fraud) investigation, as they can give the organisation appropriate legal advice and initiate action prior to, during, or after the investigation.
8. Ensure that the fraud investigation team can work in offices and systems (or parts of systems) that are not accessible to others.

## 4. Internal and external communication, including dealing with the media

The follow-up on and resolution of a case of suspected fraud is an emotional roller-coaster and has a major impact on an organisation. So it is crucially important to ensure that a case of suspected fraud is handled confidentially until decisions are made about the content and form of internal communications (e.g. to employees) and any external communications (media and other external parties). Make agreements and establish procedures and responsibilities in the fraud response plan.

1. If fraud is suspected, ensure that management and/or the supervisory body are notified as soon as possible.
2. Ensure that a case of suspected fraud is handled confidentially. Only make information available when the line of communication is clear. This applies to both internal and external communication.
3. Draw up a press release for external communication in good time and agree the contents with the investigators. Involve an (external) lawyer in this process.
4. In serious cases that may negatively impact the organisation's image, consider involving internal or external communications professionals.
5. In general internal communications, do not provide any more information than necessary and simply outline the procedure for responding to a case of suspected fraud. This approach is designed to avoid unrest in the organisation.

## 5. (Temporary) measures prior to and during the fraud investigation in respect of the parties involved

An investigation into a case of (suspected) fraud and action taken prior to and during the investigation have a major impact on those involved. This calls for meticulous procedures, especially as there is often only a suspicion of fraud in the initial phase and the evidence is not yet irrefutable. Document these agreements and procedures in the fraud response plan and also inform employees about them.

1. Treat all those who are suspected of involvement in the case of fraud fairly and respectfully.
2. Agree what (temporary) measures should be implemented against employees involved in an investigation. And communicate these measures internally among the employees.
3. Always seek legal advice on possible implications under employment law when implementing (temporary) measures against employees and directors.
4. Include a clause in employment contracts that requires employees to cooperate with investigations initiated by the organisation's management.
5. Ensure that the investigation team can work in offices and systems (or parts of systems) that are not accessible to others.

## 6. Follow-up actions based on the outcome of the fraud investigation

On completion of the fraud investigation, the investigators produce a report of their findings. The competent management or - in the case of management fraud - the supervisory body determines what subsequent steps should be taken based on this outcome. If necessary and where applicable, advice on this matter is sought from the legal department, compliance department, internal audit department, HRM department and/or an external lawyer.

Procedures and agreements relating to follow-up actions based on the results of the investigation and the subsequent steps are an important part of the fraud response plan. This involves determining whether and to what criminal authority the matter should be reported, what official bodies should be informed pursuant to the organisation's reporting obligations, etc. Identifying and documenting these matters beforehand ensures both timely action and avoids possible oversights.

1. Formulate and document agreements about which individuals within the organisation are involved in determining what concrete action needs to be taken following completion of the fraud investigation. For example, an (employment) lawyer, HRM, the compliance department, the competent management.
2. Formulate and document who will engage an (external) lawyer and when for the purpose of advising on measures to be implemented based on the subsequent steps after completion of the fraud investigation. Action may need to be taken at an earlier stage during the investigation; suspending employees, for example, or seizing evidence.
3. Consider and identify the cases in which the organisation should report the matter to a criminal authority or notify investigative agencies and document this in the plan.
4. Identify the organisation's reporting obligations to external bodies (such as the AFM and DNB) pursuant to laws and regulations, or under the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft), and document them in the fraud response plan.
5. In a situation where there is (strong) evidence of fraud, make clear agreements about measures that will be implemented under employment law (such as suspension, removal of an employee from his/her position, withdrawal of specific authorities, dismissal), civil law measures (such as initiating proceedings in order to claim damages), or criminal law measures (such as reporting the employee to the Public Prosecution Service). Also indicate who is involved in this.
6. Consider whether, and if so how, the annual accounts should be corrected as a result of the fraud and the remedial action and coordinate this with the accountant.
7. Consult with the accountant about the approach and the (minimum) requirements he/she feels necessary for a recovery plan. So that the organisation is well prepared if the suspected fraud is actually proven and a plan of action for recovery (correction) of the fraud and additional measures need to be implemented to prevent any recurrence.
8. Ask the accountant to assess the plan of action and determine whether the organisation has adequately implemented the measures included in the plan of action to remediate the case of fraud and prevent its recurrence. Make sure you include both measures that benefit your own organisation, and redress for third parties such as suppliers and customers.
9. Consult with the internal audit team about their possible added value looking to the future. Make sure you involve them as critical advisers when designing or changing processes, regulations and control measures. Internal audit, through its organisational sensitivity, is in a position to recognize differences in behaviour and assess possible risks and impacts from within the organisation and take these aspects into account in the (fraud) risk analyses.





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