

The development of an investigation process for commercial forensic practitioners in South Africa

DP Bredenkamp
25350706

Dissertation submitted in fulfillment of the requirements for the degree *Magister Commercii* in *Forensic Accountancy* at the Potchefstroom Campus of the North-West University

Supervisor: Prof JGJ Nortjé

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**THE DEVELOPMENT OF AN INVESTIGATION PROCESS FOR
COMMERCIAL FORENSIC PRACTITIONERS IN SOUTH AFRICA**

by

Daniel Petrus Bredenkamp

25350706

BCom(Hons)(Accounting)(UP) CA (SA)

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SUPERVISOR: Prof. J.G.J Nortjé

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DECLARATION

I declare that this Master's dissertation, which I hereby submit for the degree MCom(Forensic Accounting) at the North-West University, is my own work and that I have not previously submitted it for a degree at another university.

LIST OF ACRONYMS AND ABBREVIATIONS

ACFE	Association of Certified Fraud Examiners
AICPA	American Institute for Certified Public Accountants
CA-IFA	Canadian Institute for Forensic Accountants
CFE	Certified Fraud Examiner
CIMA	Chartered Institute of Management Accountants
ICFP	Institute of Commercial Forensic Practitioners
IRBA	Independent Regulatory Board for Auditors
ISA	International Standard on Auditing
SAICA	South African Institute of Chartered Accountants
SAIPA	South African Institute of Professional Accountants

ABSTRACT

The study aims to establish an integrated generic investigation process that could be utilised by Commercial Forensic Practitioners in South Africa. Secondly, it aims to determine which investigation processes are currently being utilised in South African forensics practices.

An overview is given of the international utilised processes and a basic framework was developed, presented and tested by means of questionnaires to members of the Institute of Commercial Forensic Practitioners in South Africa.

The development of an investigation process for Commercial Forensic Practitioners in South Africa could be utilised by the Institute of Commercial Forensic Practitioners to provide a governance structure for the Institute that would enhance the quality of forensic investigations and contribute to the successful investigation and prosecution of commercial crime in South Africa.

To achieve the study objective, an empirical study was conducted among current members of the Institute of Commercial Forensic Practitioners in South Africa through the circulation of questionnaires via their website.

These results were interpreted, taking cognisance of international practices identified in the literature review. A formalised investigation process was developed and suggested to the Institute of Commercial Forensic Practitioners. Statisticians were involved during the process of designing the questionnaires, and analysing and interpreting the results.

The research dealt with a generic investigation process for Commercial Forensic Practitioners. It also dealt with its implementation and investigative performance in South African practices. In this study, an overview of the investigation process for Commercial Forensic Practitioners in South Africa was discussed.

The research also analysed the following:

- The time period in which organisations implemented the Commercial Forensic Practitioners Process;

- The effect of the Commercial Forensic Practitioners Process on investigative performance; and
- The integration of the Commercial Forensic Practitioner's process into the budgeting process.

The findings of the study revealed the following:

- Each of the phases of the Commercial Forensic Practitioners Process is as important as the others in matters that will be presented before court.
- An investigation should only be performed if it can be performed properly and in a manner that provides clarity and value to the engagement and its objectives. For this purpose, a Commercial Forensic Practitioner should only accept an assignment if free of conflicts and any independence issues. It is imperative for Commercial Forensic Practitioners to adequately assess not only their relationship to the client and the particular engagement, but also their relationship to any opposing party. This assessment should be done in the context of all other work of the practice, not only that work that is performed by the particular Commercial Forensic Practitioner and direct colleagues.
- The Commercial Forensic Practitioner must design, implement and use a robust client and engagement acceptance process that is documented, standardised and, where relevant, agreed with the client.
- The role of a Commercial Forensic Practitioner in an investigation process is, therefore, to gather evidence, interrogate and examine the financial evidence, develop computer applications that help in analysing and presenting the evidence, putting forward all the findings in the form of reports, exhibits and documents, and finally taking part in civil actions or litigation as an expert witness, and testifying to the court and presenting all the evidence obtained through documentation or visual aids. It is therefore of the essence that a Commercial Forensic Practitioner be well versed in financial issues and legal concepts and proceedings.

- The study found that the majority of respondents (69.3%) were male, while only 30.7% were female. The majority of Commercial Forensic Practitioners fall within two age categories, namely, 35 to 44 and 45 to 54 years. These age categories fall into the productive stage of a working career in the human life-cycle. It is furthermore inferred that the level of experience is of importance, as the majority of participants were well experienced, mostly with at least ten years' experience.
- A total of 22.7% of respondents indicated that they do not use a formalised investigation process. The majority of respondents (77.3%) thus make use of a formalised investigation process.
- The study found that formalised investigation processes are not implemented for the following reasons:
 - Managerial and governance processes within practices were sufficient to address the risks posed (41.2%);
 - Commercial Forensic Practitioners do not have a formalised investigation process at their disposal (35.3%);
 - Commercial Forensic Practitioners are not aware of a formalised investigation process being utilised in industry that could be used (23.5%); and
 - The implementation of a formalised investigation process proved too difficult (23.5%).
- The most important reasons for implementing a formalised investigation process included reputational risks and quality control of investigative work. It was notable that the study revealed that the industry does not require practitioners to follow any procedures.
- It is noteworthy that practitioners did not regard monitoring and management review of compliance with the provisions of their formalised investigation process as an important requirement. The study revealed that the majority of Commercial Forensic Practitioners would measure compliance as an occasional requirement (33.3%); only 23.3% placed compliance as an agenda item for each monthly management meeting and 16.7% as a quarterly agenda item.

- The majority (56.3%) of practitioners recognised that integration of a formalised process with the budgeting process could enhance productivity and financial benefits.
- The majority of respondents (88.1%) were of the view that there was an improvement in financial performance and/or productivity after the implementation of the formalised investigation process.
- 62% of respondents were of the view that there was a significant improvement in financial performance and productivity since the implementation of the formalised investigation process.

This finding is significant, as it proves that a formalised process for Commercial Forensic Practitioners in South Africa can have a positive effect on a practise's financial performance.

The suggested sub-processes, as described, are accepted by the respondents, namely:

- Client acceptance, service considerations, risk management procedures, independence and engagement agreements;
- Planning and strategic objectives of an engagement, including documented investigative plan incorporating the relevant disciplines (accounting, law, IT, investigative and risk management skills);
- Gathering information and evidence, documenting evidence in an evidence file or system and safeguarding evidence as important;
- Interviewing, using best practice interviewing skills, by planning the interview to achieve strategic objectives, recording the interview and using technology;
- Analysis and verification of evidence;
- Quality management, with all reported findings included in referenced working papers supported by documented physical evidence; and
- Reporting on findings in a detailed forensic report, clearly and concisely reflecting on the sequence of events, supported by financial information and documents, in a format that could be used in disciplinary enquiries and/or proceedings in civil and criminal courts.

These findings fulfil the objective of the study, which was to establish an integrated generic investigation process that could be utilised by Commercial Forensic Practitioners in South Africa and secondly to determine which investigation processes are currently being utilised in South African forensics practices. It was clarified whether the implementation of a formalised process can lead to an improvement in financial performance and what the result of the integration of a formalised process into a practise's budgeting process is. It was established that there is indeed a relationship between the integration of the formalised process into the budgeting process and the improved financial performance of a practise.

The findings of this study have significant implications for the management of South African Commercial Forensic Practitioner practices. Based on the study findings, the following general and specific recommendations can be made:

- The investigation process for Commercial Forensic Practitioners should be fully integrated with the budgeting process of the practise, as this will ensure improved investigative performance by the business; and
- Education and research on the investigation process for Commercial Forensic Practitioners should be conducted by the management of a practice before implementing such a process.

KEYWORDS:

Generally Accepted Accounting Standards; International Financial Reporting Standards; International Standards on Auditing; Commercial Forensic Practitioner; material misstatement; fraud; financial statement fraud; corruption; commercial crime; multidisciplinary activity

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CHAPTER 1

1. INTRODUCTION

1.1 ***Background to the research area***

In the recent past, several instances of corporate scandals have placed professional accounting bodies in the spotlight beyond which statutory audit and the trend of corporate governance envisaged. There are many examples of such failures within the international and local business communities, such as Enron, WorldCom and, closer to home, Saambou Bank, Tigon and Krion.

Hence, the role of the Commercial Forensic Practitioner has expanded and has been under scrutiny during the recent past for reasons including the requirement for much more stringent corporate governance regulation as brought about in the United States of America (USA) by the Sarbanes-Oxley Act of 2002, and in South Africa by the King Report on Corporate Governance. The relevance of this legislation and corporate governance code is amplified by the widespread recognition of the risks and the prevalence of commercial crime in today's business environment. As a result of these issues, Commercial Forensic Practitioners, including forensic accountants, investigators, lawyers and information technology experts, are hired and retained to support specialised commercial investigations related to a broad range of subjects. These could include the financial impact of marketplace events, such as intellectual property infringement and anti-trust actions, financial reporting fraud, procurement fraud, asset impairment and business valuation. These investigations occur in contexts such as civil litigation, alternative dispute resolution, insurance claim adjustment, internal fraud investigation, securities class action and internal corporate investigations. In the international arena, Commercial Forensic Practitioners receive widespread recognition, due to this *inter alia* being regarded as a profession and regulated as such. In this regard, the Association of Certified Fraud Examiners (ACFE) should be mentioned. The ACFE is located in the USA and has a chapter in South Africa, but does not regulate the profession as such in South Africa. By comparison, the audit profession in South Africa is stringently regulated through the Auditing Professions Act (No. 26 of 2005) by

means of the Independent Regulatory Board for Auditors. The audit profession is regulated and structured, with set standards that are regularly updated, and a Code of Ethics and Conduct that is strictly enforced in conjunction with disciplinary measures for members who do not comply. The prescribed utilisation of the International Standards on Auditing in all audit work conducted by registered auditors furthermore governs and enhances the quality of work conducted by the profession. In stark contrast, the Institute of Commercial Forensic Practitioners envisages regulating the profession, but still lacks sufficient policies and procedures to enhance its governance structures. At present, the profession is governed only by means of a Code of Conduct and continuing professional development structures. Although these are a step in the right direction, governance in the form of quality control standards is also required.

The complexities of problems posed to Commercial Forensic Practitioners increasingly require skill sets beyond a typical understanding of financial records, Generally Accepted Accounting Principles and the International Standards on Auditing. Forensic accounting only partially fulfils the requirements of an engagement. Generally, a team of Commercial Forensic Practitioners with a variety of skills is needed to address many of the challenges posed by complex cases. The challenges and logistics involved in finding data in various locations, including electronic data devices, personal computers and smart phone wireless devices, require Commercial Forensic Practitioners who are familiar with electronic data systems and who can identify and search through electronic storage devices to find case-critical documents. Furthermore, allegations of market manipulation would often require an understanding of economics, finance and how financial investment firms operate to fully document issues of causation and actual loss sustained. Permanent impairment of a company's value due to an alleged act would necessitate the use of accepted valuation skills. This complexity has created a need for a multidisciplinary profession of Commercial Forensic Practitioners who are proficient in accounting, finance, economics, computer technology, investigation, statistics, valuation and legal processes. Specific industry

expertise is also an important element in the equation, making this team a group of highly specialised experts.

The growth of public limited liability companies, a large increase in the number of investors owning shares and the divorce of ownership from control of companies has called for regular auditing of corporate financial reports. The objectives of the ordinary audit of financial statements by an independent auditor according to AICPA (1992) is the expression of an opinion on the fairness or otherwise in all material respects, the financial position, results of operations and cash flows in accordance with Generally Accepted Accounting Principles. Modern organised corporate frauds are sophisticated and well-resourced by the manager, entrepreneur and politicians to mention but a few. There is thus a need to respond to this changing criminal threat, and the skills of non-traditional investigators such as Commercial Forensic Practitioners are required to combat and investigate commercial crimes.

The term 'forensic investigation' refers to the use of science or technology in the investigation and establishment of facts or evidence to be used in criminal justice or other proceedings. The investigation process is therefore a systematic comprehensive activity involving planning, information collection, applying logic and exercising sound reasoning. The end result of the investigation is the factual explanation of what transpired; or if it was an investigation of something that has taken place but remains a current issue, the investigation should reveal what is occurring.

The view of Sennewald and Tsukayana (2006:3) is that the art of investigation belongs to no single party, and no-one has all the precise answers on how an investigation can lead to the desired result. Many aspects are involved in the process of collecting information, applying logic and analysing the evidence, including intuition, luck, mistakes and gut feeling.

All investigations share similarities: each must pass from initiation to planning, execution, analysis, reporting and probably prosecution. In some cases, the

stages might overlap. Each stage plays a key role in the investigation process.

1.2 Literature review of the topic/research area

Generally Accepted Accounting Standards and International Financial Reporting Standards guide auditors in the statutory audits of financial statements. In addition, auditors also have to base audit assignments on the International Standards on Auditing (ISA), which set out the audit process from accepting the client to reporting procedures.

Although Commercial Forensic Practitioners, as members of professional bodies such as the South African Institute of Chartered Accountants (SAICA) and/or the Independent Regulatory Board for Auditors (IRBA), which functions in terms of the Auditing Profession Act (No. 26 of 2005), can draw from these standards and codes of conduct in their day-to-day activities, there are differences in the professional responsibilities of auditors and Commercial Forensic Practitioners. Blumenfeld (1992:1) highlights and describes the differences between financial statement audits and forensic accounting.

Golden *et al.* (2006:21) also highlight the differences between the roles and responsibilities of auditors and forensic accounting investigators. The auditor's main objective is to provide an opinion on whether the financial statements of an entity are fairly stated in all material respects. The auditor is therefore required to design and implement audit procedures of sufficient scope and depth in order to detect material misstatements in the financial statements (Golden *et al.*, 2006:21). The auditor's responsibilities are clearly defined and laid out in the International Standards on Auditing (ISA). In terms of ISA 200 (2006.par. 2), "the objective of an audit of financial statements is to enable the auditor to express an opinion whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework". The auditor is therefore required to plan and perform the audit in order to reduce the audit risk to an acceptable level that is consistent with the objective of an audit. The auditor is required to design and

perform audit procedures in order to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base an audit opinion (ISA 200, 2006:par. 24). By contrast, the Commercial Forensic Practitioner is concerned with the detailed development of factual information derived from evidence obtained from the investigation of allegations or irregularities reported (Golden *et al.*, 2006:22). Forensic accounting procedures differ from an audit of financial statements in that sampling and materiality concepts do not apply in forensic accounting procedures. The Commercial Forensic Practitioner seeks and examines all relevant evidence (Golden *et al.*, 2006:22). “Accordingly, the scope of the investigation and the evidence gathered and documented must be capable of withstanding challenges that may be brought by adversely affected parties or sceptical regulators” (Golden *et al.*, 2006:22). The most important similarity between an auditor and a Commercial Forensic Practitioner, according to Golden *et al.* (2006:22), is that they both need to be independent and objective.

According to Oberholzer (2002:44), there is a growing convergence of forensic accounting and regulatory auditing. The increase in the numbers of fraud investigators resulted in the establishment of the Association of Certified Fraud Examiners (ACFE). Certified fraud examiners (CFEs) gather evidence, take statements, write reports and assist in investigating fraud. The ACFE has developed Professional Standards and Practices for CFEs. These Professional Standards and Practices include standards on independence and objectivity, due professional care in fraud examinations and confidentiality (Oberholzer, 2002:46).

The auditor is guided in respect of work acceptance, quality and risk management issues, and audit procedures by the International Standards on Auditing. Auditing is furthermore an attest function, and the client and third parties may rely on an auditor’s report. There is limited room for deviation within the responsibilities of auditors, whereas Commercial Forensic Practitioners can limit their responsibilities in accordance with the nature of

the engagement to a much greater extent, provided that due care is exercised and no negligence is involved.

The report issued by a Commercial Forensic Practitioner is in most instances prepared for the sole use of the client, and the client needs permission from the Commercial Forensic Practitioner to give it to third parties. Although techniques similar to those used in financial statement audits can be used by Commercial Forensic Practitioners in order to perform investigations, the objective of the procedures is different.

Nortjé (2010:2) maintains that the audit process applied in auditing financial statements from the beginning of an audit to the end cannot be used for an investigation by the Commercial Forensic Practitioner because the roles and responsibilities of an auditor and a Commercial Forensic Practitioner are different. The Commercial Forensic Practitioner should follow an investigation process from initial contact with a client until testifying in court as an expert witness.

Although the external auditor and the Commercial Forensic Practitioner both concern themselves with financial statements and accounting records and may share some similar goals, they have different responsibilities, roles, knowledge and skills (Gray, 2008).

According to Singleton *et al.* (2006:4), the forensic accounting process involves the application of financial skills and investigative mentality to unresolved issues, conducted within the context of the rules of evidence. As a discipline, it encompasses financial expertise, fraud knowledge, and a sound knowledge and understanding of business reality and the working of the legal system. The development of the process has been achieved primarily through on-the-job training as well as the experience of investigating officers and legal counsel. It is evident from the above definition of forensic accounting that forensic accounting is more than just the application of accounting principles, but is rather a multidisciplinary activity that requires the use of knowledge

from a number of disciplines including law, information technology (IT), investigation and taxation.

The investigation process, generally at a high level, will include engagement planning, obtaining evidence, analysing evidence, conclusion and reporting (Golden *et al.*, 2006:579). Throughout this process, it is very important to take care of the manner in which evidence is obtained; the use of certain evidence-acquiring tools or techniques should be evaluated as some of them may not be legal and thus render the entire body of evidence inadmissible, as mistakes in handling critical evidence cannot be rectified at a later stage.

The Commercial Forensic Practitioner does not operate in a single industry or type of investigation. Every investigation is different. Thus, similar to registered auditors following an audit process, Commercial Forensic Practitioners should also follow a process in order to minimise risk and ensure the success of the investigation.

All investigations share similarities and must pass through similar stages. Silverstone & Sheetz (2007) explain that these stages proceed from initiation to planning, execution, prosecution and finally reflection. In some cases these stages might overlap, and in some cases they might be curtailed. Silverstone & Sheetz argue that each stage plays a key role in how well, or how poorly, the actual outcome matches expectations.

Silverstone & Sheetz (2007) note that the investigation process consists of the following five distinct categories:

- Initiation: Client and engagement acceptance;
- Planning: Investigation approach;
- Execution: Gathering evidence and document management;
- Prosecution: Reporting; and
- Reflection: Other completion activities.

This significant field of expertise within different environments in which Commercial Forensic Practitioners operate requires different specialist skills and appropriate investigation techniques, including but not limited to a combination of accounting and auditing techniques, and the use of appropriate legal remedies and investigation techniques, which need to be utilised during an investigation to ensure eventual success for the client.

The investigation methodology followed from one investigation to the next will seldom be the same. However, there are common themes and phases in the investigation process that remain consistent, including professionalism, objectivity, impartiality, and clear and concise communication.

The investigation process followed by Commercial Forensic Practitioners may differ from firm to firm, or even from one practitioner to the next. It could also be argued that the process will differ for criminal, civil and disciplinary proceedings. Moreover, an assignment could start out as a civil investigation but be changed to a criminal assignment during the course of the investigation. Even though a change in the mandate might be required, the process followed by the Commercial Forensic Practitioner must be such that it can continue under such circumstances and not need to be restarted as a criminal investigation.

Although Commercial Forensic Practitioners may follow different processes, depending on the circumstances of the assignment or specific firm prescriptions, general trends can be identified. An investigation usually starts with a client meeting; the mandate will then be drawn up and signed by the parties, and the Commercial Forensic Practitioners will initiate the process and collate information, which they will report on in a predetermined format, followed by the possibility of litigation.

The demands and risks associated with forensic accounting investigation and auditing the financial statements of public companies have changed dramatically over the past years. The recently publicised financial scandals

have far-reaching implications for the regulation of the accounting profession and corporate governance.

Prendergast (2010) stated that the objective of a client acceptance programme, is to “gain insight into the prospective client’s past business practices, the integrity of the management team and to identify any issues that may create a breach of the Commercial Forensic Practitioner’s professional obligations”.

The purpose of the client and engagement acceptance procedures is to manage the following risks, as noted by Fouché (2010):

- Claims risk;
- Reputational risk; and
- Commercial risk.

Fouché (2010) notes the following important considerations at this stage of the investigation:

- Independence;
- Conflicts of interest;
- Suitability of client; and
- Appropriate to accept engagement.

An extension of the scope of the investigation to other entities and/or related parties may sometimes be required. In such circumstances, the performance of independence and conflict searches is required to ensure that the Commercial Forensic Practitioner maintains absolute independence and an unbiased approach.

There should be valid reasons to even consider commencing with an investigation. Golden et al. (2006:297) refer to this as ‘predication’. Predication is defined as “the totality of circumstances that would lead a reasonable, professionally trained, and prudent individual to believe a fraud has occurred, is occurring, or will occur. Predication is the basis upon which

an examination is commenced. Fraud examinations should not be conducted without proper predication” (ACFE, 1998:1-6). According to Golden *et al.* (2006:299), a basic understanding of the issues on hand is vital to planning and gathering the right resources in order to execute the assignment.

Subsequent to an initial meeting with the client, the Commercial Forensic Practitioner defines the assignment. In doing so, the Commercial Forensic Practitioner must determine the elements of the case to be proved, formulate a hypothesis for what happened and then focus on those elements. It is important to emphasise that investigations are focused on identifying the truth as opposed to the conception of many that they are only designed to prove guilt.

Standard Practice 200 of the Canadian Institute for Forensic Accountants (CA-IFA) (2006:5) provides guidance for investigative and forensic accounting engagements in respect of engagement acceptance. This standard practice guide requires a forensic accounting professional to begin by establishing and documenting the parameters of the engagement with their client. The parameters noted include the role of the forensic accounting professional, the purpose and scope of the engagement and the type of report to be issued.

The allegations and/or the information available should therefore be assessed and evaluated to ensure that appropriate measures are taken to deal with the matter under investigation. Renick (2007:64) states that the Commercial Forensic Practitioner should define the problem, the issues involved and the scope of the engagement well before execution of the task. A projection of the timeframe, cost and expected deliverables for each phase has to be determined. These quality-control procedures will ensure that the Commercial Forensic Practitioner has a basic understanding of the allegations (Van Rooyen, 2008:89).

Prior to the commencement of the forensic investigation, the Commercial Forensic Practitioner needs to consult with the necessary experts in order to

determine whether the specific forensic services can be rendered. For example, dispute services may not be rendered for audit clients regulated by the Security and Exchange Committee (SEC), as the auditor may not audit its own work (the dispute calculations) (Fouché, 2010:18).

The factors to be considered when performing a client acceptance include poor reputation and doubts about management's integrity, significant management turnover, problems experienced with regulators and significant losses incurred by the entity (Fouché, 2010:31).

MacGregor *et al.* (1998) emphasise the importance of ensuring that no conflict of interest exists if there are any perceptions that the objectivity of the firm is likely to be impaired. Where there is a conflict of interest, the activities of the firm should be managed so as to avoid the work of the firm on behalf of one client adversely affecting that on behalf of another.

CA-IFA (2006:5) Standard Practice 200 par. 05 states that if forensic accounting practitioners are aware of circumstances where their independence may reasonably be questioned, this should be disclosed to the client. In terms of section 3.5 of the Accounting Professional and Ethical Standards Board (APESB) (2008:5), a member is required to comply with independence as defined in this standard. The member is required to be independent in mind and in appearance.

Fouché (2010:13) supports these definitions as stated in Standard Practice 200.

IAS 240 also states that an auditor should be independent both in mind and in appearance. An investigator's independence could be compromised by self-review and self-interest, as well as by advocacy, familiarity and intimidation. Thus, where IFA practitioners are aware of circumstances where their independence may reasonably be questioned, they should disclose these

circumstances to their client. Golden *et al.* (2006:296) imply that additional research may need to be conducted in order to vet some potential clients.

The APESB (2008:5) notes that it is interesting from the standard that there is no legal requirement for an expert witness to be free of any relationship with parties to the proceedings. Expert witnesses are required to disclose matters in their report that will assist the court to decide the degree of independence of the expert witness. According to Golden *et al.* (2006:296), it is important to perform a relationship review and conflict check. This process entails identifying the entity and party names for comparison with outstanding engagements. Any potential conflicts should be cleared, calls made and responses documented prior to accepting any engagement. Conflict of interest arises when there is a relationship with one of the parties to the investigation or dispute. The major forensic accounting firms have conflict check procedures during which details of the client are noted, including the parent company of the client. The specific engagement details are also provided, that is, the nature, type and a brief description of the engagement. Parties that are known to be affected by the engagement are also listed. If any such relationships exist, consideration is given to whether the engagement can be performed or not. Any conflicts of interest should be disclosed and resolved with the client. If there are no conflicts, or once potential conflicts have been resolved, the forensic accounting professional can accept the engagement. MacGregor *et al.* (1998:104) support this view.

Conflict checks also need to be performed throughout the forensic investigation as and when implicated parties are identified (Zysman, 2010). A client acceptance procedure should be performed for each client, and the client risk should be considered when there is any significant change in circumstances (for example, change in directors or change in ownership) (Ernst & Young, 2010a:10).

Krstic (2009:299) comments that “a high degree of independence and objectivity is expected of Commercial Forensic Practitioners, in accordance

with the ethical codex for professional Commercial Forensic Practitioners”. Before commencing an investigation, Commercial Forensic Practitioners should thus consider their ability to be independent and objective.

MacGregor *et al.* (1998:95) state that “an expert should not accept instructions in any matter where there is an actual or potential conflict of interest”. This could occur where the Commercial Forensic Practitioner has an interest in the opposing party or where the Commercial Forensic Practitioner has an interest in the potential client.

Meintjies-Van der Walt (2001:2) states that expert witnesses have been criticised most, from a judicial perspective, for bias towards the party by whom the Commercial Forensic Practitioner is employed. She further suggests that such bias might be used in cross-examination of expert witnesses to discredit their testimony.

Golden *et al.* (2006:296) state that an engagement letter must include at least the name of the client, the scope of services, fee arrangements and possibly also indemnification and reference to legal matters.

The client or his/her representative must sign the engagement letter so that there is a clear acknowledgment that he/she has understood the terms of the engagement.

Golden *et al.* (1998:296) summarise certain minimum requirements for inclusion in the engagement letter, namely:

- Name of client;
- Scope of services; and
- Fee arrangement.

Coenen (2009:30) notes that the fee will be determined by the number of hours spent in analysing documentation and information during the investigation. The client will be required to decide if the expected fee and

resultant work will provide the value needed to resolve the dispute. Coenen (2009:32) further notes that the Commercial Forensic Practitioner will also have to consider whether the fee is worth the risk posed and the resources required for the engagement. Golden *et al.* (2006:297) further recommend that the client should be kept apprised of the fees that will be charged.

Reporting aspects of the engagement and access to the Commercial Forensic Practitioner's work product are also covered by engagement letters (Ernst & Young, 2010a:29). The engagement letter is a formal written agreement mandating the Commercial Forensic Practitioner to perform the tasks in a diligent way, and should be compiled and signed by both parties. The engagement letter must clearly state the terms and conditions in order to avoid any misunderstanding or to create an expectation gap. The Canadian Institute of Chartered Accountants (CICA) sets specific guidelines for the factors to be taken into consideration and information to be included in all mandate letters.

Golden *et al.* (2006:42) note that several considerations should be taken into account by the Commercial Forensic Practitioner during the planning phase of the engagement, including:

- Nature of the allegations;
- Evidence required prove the allegations;
- Type of evidence required (such as records of witnesses); and
- Acquisition of such evidence.

The investigation should be planned with the client's objectives in mind. All the information documented during the engagement activities phase should be used to prepare a feasible investigation plan. The evidence to be collected during the investigation is determined by the motive and the elements of the crime.

Golden *et al.* (2006:295) state that having a plan and working towards it serve to structure the engagement, and that a basic understanding of the issues is

the key to planning and gathering the right resources in place to execute the selected procedures.

Fouché (2010:37) states that planning should include:

- Work stream;
- Skills required;
- Assigning responsibilities;
- Review process; and
- Timelines.

CA-IFA (2006:7) Standard Practice 300 requires the forensic accounting practitioner to plan the engagement adequately. Par. 02 of the standard explains the uniqueness of every investigative and forensic accounting engagement and the need to customise and adapt as the engagement progresses, which requires the constant application of professional judgement. The standard highlights the need for a forensic accounting practitioner to identify the objectives of the engagement and the circumstances that gave rise to it as part of the planning. This view of planning for effectiveness is also supported by Golden *et al.* (2006:295), who maintain that having a plan and working according to it serve to structure to the engagement. The objective in any forensic accounting investigation assignment is to apply investigative techniques that produce investigative results that can withstand scrutiny by the client, legal counsel, and regulatory and judicial authorities (Golden *et al.*, 2006:295). According to Silverstone and Sheetz (2007:119), a good investigative plan should have three major goals, namely, to maintain focus, control growth and promote adaptability.

CA-IFA (2006:7) Standard Practice 300 provides guidance to the forensic accounting practitioner in planning the scope of the engagement. The standard requires the forensic accounting practitioner to consider the approaches, procedures and techniques that will allow the practitioner to satisfy the engagement objectives.

CA-IFA (2006:7) refers to numerous aspects of planning and states that the planning activities should include:

- Identifying the objectives of the assignment;
- Obtaining an understanding of the background and history surrounding the work, as well as the context in which the dispute occurred;
- Identifying any limitations of scope, such as missing information;
- Organising the resources and team required to perform the work including supervision; and
- Management of these resources.

Ernst & Young (2010b:8) emphasises the need to be cautious and not over-define the scope. The recommendation is to adopt a flexible approach, unless constrained by fees, but at the same time challenge any proposed limitation of scope consistent with objectivity and proper investigation. In determining the engagement scope, it is necessary to consider the interim findings and the continued revelation of facts and circumstances (Ernst & Young, 2010b:8). Experience in practice has shown that it is not practical to prepare detailed work plans because of the danger of falsely assuming facts and circumstances and inappropriately setting expectations. This could also compromise objectivity by making assumptions about future matters and the outcomes of the work. The most important factor is that the agreed-upon procedures as per the International Standard on Related Services (ISRS) 4400 are not appropriate for investigating fraud (Ernst & Young, 2010b:8).

According to Du Plessis (2001:4,6), the service rendered by a Commercial Forensic Practitioner is an area of specialisation in a multidisciplinary profession, comprising Commercial Forensic Practitioners, lawyers and individuals formerly employed by investigating agencies. A forensic investigation team could consist of a team leader who is a Commercial Forensic Practitioner, and team members comprising a Commercial Forensic Practitioner, legal expert, investigator and IT expert. The engagement leader and team should possess the required skills and competence to execute the mandate.

According to Greene (2010), the Commercial Forensic Practitioner can commence the engagement planning as soon as the initial interaction with the client has taken place.

A combination of the thoughts of Greene (2010) and CA-IFA (2006:5-6) suggests that this initial meeting with the client, as discussed above, is the opportunity to obtain an understanding of the nature of the work, the client's requirements and expectations, timelines, information and evidence potentially available, documents, contracts, laws, regulations, parties involved and the documents setting out any acceptable behaviour that was deviated from, resulting in the dispute.

Golden *et al.* (2006:22) also stress the importance of obtaining sufficient knowledge of the industry, the business, and the accounting and internal control systems.

Golden *et al.* (2006:297) state that the engagement team must make an effort to keep the client aware of the fees incurred. It may be a good idea to communicate fees in phases or in terms of fees per week. Fees and billing should be communicated regularly throughout the engagement to avoid surprises. Golden *et al.* (2006:295) stress the need to communicate with the client, engagement manager and other role players. When large teams work on fast-moving assignments, it becomes necessary to communicate and coordinate on a continuous basis. Ongoing client and team planning meetings are crucial, as the circumstances are generally dynamic and there may be relevant issues requiring re-defining as the engagement progresses (Ernst & Young, 2010b:8).

CA-IFA (2006:9) Standard Practice 400 states that the forensic accounting practitioner should apply an investigative mind set in the identification, pursuit, analysis and evaluation of information relevant to the forensic accounting investigation. The standard states that "IFA practitioners should identify, analyse, assess substance over form, and develop and test, as needed, hypotheses for the purpose of evaluating the issues in the IFA engagement" (CA-IFA, 2006:9).

The quantity and quality of evidence must convince an honest and reasonable layperson that the defendant is guilty after all the evidence has been carefully considered and impartially weighed (Singleton *et al.*, 2006:299).

Evidence, in general, is any relevant information or object that is admissible in court and has an influence on the outcome of the case (Zeffert, 2003:12). Only admissible evidence can have an influence on the outcome of a case.

Silverstone & Sheetz, (2007:161) contend that it is of cardinal importance that a system for organising and collating evidence is methodically followed to ensure proper categorisation of the evidence, as well as to ensure that the chain of custody is maintained and properly recorded.

Section 35(5) of the Bill of Rights in the Constitution of South Africa (1996) lays down another requirement that is of paramount importance in that “(e)vidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice”.

The gathering and securing of evidence is vital in any forensic accounting assignment. The principles remain the same whether it is a fraud investigation or a disputed matter. Information or evidence must be obtained legally and correctly at the first instance.

The Commercial Forensic Practitioner needs to consider and adhere to the provisions of all South African legislation throughout the investigation process. The following legislation in the investigation of criminal cases is important and will apply in all investigations conducted within the borders of South Africa:

- Constitution of the Republic of South Africa, 1996; and
- Criminal Procedure Act (No. 51 of 1977).

1.3 *Motivation of topic actuality*

Many different processes are referred to in the literature. All of the above only partially considers elements of the process as a whole. There is no single generic process that could be tailored to suit the needs of the Commercial Forensic Practitioner. The Institute for Commercial Forensic Practitioners currently only has a Code of Conduct and framework for continuing education, and lacks other governance frameworks comparable to the International Standards on Auditing. It is therefore contended that the Institute of Commercial and Forensic Practitioners should adopt a generic process including the processes mentioned in this study, but tailored to the needs of the South African Commercial Forensic Practitioner.

The lack of current regulation of Commercial Forensic Practitioners not only creates a reputational risk for individuals in the profession, but also directly impacts on the entire investigation process. Unless due care and diligence are followed in performing investigations, the whole process could be rendered useless, as the objective of the process is to be able to take disciplinary measures, recover assets and ultimately prosecute, which relies on the investigation being performed in terms of set standards and the quality of the investigation being of the highest standard.

The current financial crisis has given rise to an increased focus on forensic investigations and an upward trend in complex commercial crimes.

PROBLEM STATEMENT

The purpose of this study was to critically analyse and discuss a generic investigation process to be followed by the Commercial Forensic Practitioner from the initial contract with the client until testifying in court as an expert witness, in compliance with any of the proposed standards and/or code.

The failure of the statutory audit function to prevent and reduce misappropriation of corporate funds, together with an increase in commercial

crime, has placed pressure on Commercial Forensic Practitioners to find better solutions to combat and report commercial crime in the business environment. A study conducted by Kessler International during 2009 revealed that 39% of organisations considered there to be a need for the services of a Commercial Forensic Practitioner (Owojori & Asaolu, 2009).

This study aims to identify a generic process that Commercial Forensic Practitioners should follow in executing investigations into commercial crime. Although much has been written on forensic accounting processes internationally, there have been few studies that directly assess a formalised process and the benefits associated with such process. No such research is known to have been conducted in South Africa.

This study will focus on the development of a formalised investigation process for Commercial Forensic Practitioners in South Africa. The following questions are key in the development of such a process:

- Question 1: Which investigation processes are currently being utilised in South African forensics practices?
- Question 2: Can these processes be combined to establish an integrated generic investigation process that could be utilised by Commercial Forensic Practitioners in South Africa?

OBJECTIVES

The objective of this study was exploratory to develop a formalised investigation process that Commercial and Forensic Practices could introduce into their environment to govern and regulate investigative activities and to enhance the quality of investigative work performed. Currently, no formalised investigation process exists, and no known research on this topic has been conducted in South Africa. This study will therefore give an indication whether the process will be beneficial for the profession as a whole.

1.4 *Main objective*

To establish an integrated generic investigation process that could be utilised by Commercial Forensic Practitioners in South Africa.

The primary dependent measure in this study is the actual process followed by forensic accounting practices.

1.5 *Secondary objectives*

To determine which investigation processes are currently being utilised in South African forensics practices.

1.6 *Hypothesis*

The development of an investigation process for Commercial Forensic Practitioners in South Africa that could be utilised by the Institute of Commercial Forensic Practitioners would provide a governance structure for the Institute that would enhance the quality of forensic investigations and contribute to the successful investigation and prosecution of commercial crime in South Africa.

RESEARCH DESIGN/METHOD

Literature review

The research commenced with a thorough review of the current available literature, highlighting the different approaches and processes used in international forensic practices. A number of international and local sources were utilised in the literature review, including internet searches, publications of well-known international forensic practices, local and international academic articles and the International Standards on Auditing, International Financial Reporting Standards and Standards of the Canadian Institute of Chartered Accountants.

Empirical research

An empirical study was conducted among current members of the Institute of Commercial Forensic Practitioners in South Africa through the circulation of questionnaires via their website.

These results were interpreted, taking cognisance of international practices identified in the literature review. A formalised investigation process was

developed and suggested to the Institute of Commercial Forensic Practitioners. Statisticians were involved during the process of designing the questionnaires, and analysing and interpreting the results.

OVERVIEW

Chapter 1: This chapter covers the research proposal. It contains the introduction, the objective of the study, the statement of the problem and the significance of the study.

Chapter 2: Chapter 2 is an overview of the investigation process for Commercial Forensic Practitioners. It includes an introduction, the four suggested sub-processes, the implementation of the investigation process for Commercial Forensic Practitioners, the benefits of a formalised process for Commercial Forensic Practitioners, and reasons for the unsuccessful implementation of investigation process at practices in South Africa. This chapter also compares the current practices utilised by Commercial Forensic Practitioners with the statutory auditing process. The communication and utilisation of the process as a tool for communicating strategy are discussed and analysed. Management control of strategy is discussed as a function within the process. The effect of current practices utilised by Commercial Forensic Practitioners on investigations in South Africa is discussed and analysed. The chapter is summarised and research questions are drawn from the literature.

Chapter 3: This chapter deals with the research methodology. It contains an introduction and discusses data collection, the population and sample of the study, the reliability of the research and an analysis of data gathered.

Chapter 4: This chapter contains a summary, the conclusion drawn from the study and possible recommendations.

Further studies could flow from this study to test whether the prescribed process is a statistically valid model that could be used by practices and whether it would enhance investigative performance and mitigate risk factors.

CHAPTER 2

INTRODUCTION

As early as 1931, J.H. Burton, a member of the Institute of Municipal Treasurers and Accountants and a lecturer in Accountancy and Auditing at the Municipal High School of Commerce, Manchester in the United Kingdom, stated that investigation work is the “most difficult section of an accountant’s business – and it is probably the most interesting”. Burton (1931:v) furthermore stated that in the same way that not every accountant is suited to be an auditor, neither is every auditor suited to be an investigator. Of all the tasks required of accountants, no single task places a greater burden of responsibility on an accountant than a diligently conducted investigation into the affairs of another as, irrespective of the object of the investigation, important issues are dependent on the investigation report.

Burton (1931:1) furthermore defined the term “investigation” as a special audit; however, he stated that it entails more than an audit, which does not necessarily require the examination of books and records. Investigations entail careful search and inquiry into all circumstances and matters that may have an influence on the object of the inquiry. The objectives of an investigation are different from a financial audit. A financial audit commences without any definite technical instructions, whereas an investigation has a definite objective in view. Burton stated that an audit often covered little more than the verification of the arithmetical accuracy of the books, taking cognisance in order to detect errors, fraud and errors of principle. Investigations, on the contrary, should achieve all these objectives, coupled with disclosure of information specifically sought.

Brightman (2009:2) states that during the last 100 years, there have been many examples of public and corporate officials seeking to expand their powers, prestige and wealth at the expense of others, and the public demanding that there “ought to be a law” to address such cases. Various laws have been passed to address white-collar crime. It is not the absence of laws;

however, but the enforcement of these laws, statutes, ordinances and regulations that is required to combat modern white-collar crime.

Albanese, J. (1995:86) notes that “(l)ittle is known about the extent, seriousness, and impact of white-collar crimes on victims...Until both the public and the government see white-collar crime as a problem of equal significance to conventional crimes, we will not achieve a comprehensive understanding of the extent of the problem”.

The complexities of problems posed to Commercial Forensic Practitioners increasingly require skill sets beyond a typical understanding of financial records and Generally Accepted Accounting Principles. Forensic accounting only partially fulfils the requirements of an engagement. More often, a team of Commercial Forensic Practitioners with a variety of skills is needed to address the many challenges posed by a complex case. The challenges and logistics involved in finding data in various locations, including electronic data devices, personal computers and smart phone wireless devices, require Commercial Forensic Practitioners who are familiar with electronic data systems and who can identify and search through electronic storage devices to find case-critical documents. Furthermore, allegations of market manipulation would often require an understanding of economics, finance and how financial investment firms operate to fully document issues of causation and actual loss sustained. Permanent impairment of a company's value due to an alleged act will necessitate the use of accepted valuation skills. This complexity has created a need for a multidisciplinary profession of Commercial Forensic Practitioners who are proficient in accounting, finance, economics, computer technology, statistics, valuation and legal processes. Specific industry expertise is also an important element in the equation, making this team a group of highly specialised experts.

The investigative forensic team rarely has access to all the relevant information related to a case and is therefore not always able to respond with absolute certainty. The reasons that certain data cannot be found include the

manipulation of records, destruction of evidence, time limitations on completing the investigation and restrictions imposed on the litigation investigation process by the parties involved. With this in mind, the forensic team must utilise a number of skills and techniques to reconstruct or uncover the facts. Since many damage calculations require the construction of a theoretical reality “but for the event”, the team must also be adept at working through the facts against a hypothetical situation as if no damage event had occurred.

2.1 BACKGROUND

The lack of current regulation of Commercial Forensic Practitioners not only creates a reputational risk for individuals in the profession, but also directly impacts on the entire investigation process. Unless due care and diligence are followed in performing investigations, the whole process could be rendered useless, as the objective of the process is to be able to take disciplinary measures, recover assets and ultimately prosecute, which relies on the investigation being performed in terms of set standards and the quality of the investigation being of the highest standard.

The current financial crisis has given rise to an increased focus on forensic investigations and an upward trend in complex commercial crimes.

In stark contrast with the forensic accounting profession, the auditing profession is regulated and structured, displaying set standards that are regularly updated, and a Code of Ethics and Conduct that is strictly enforced in conjunction with disciplinary measures for members who do not comply. According to Sennewald and Tsukayana (2006:3), an investigation is the examination, study, searching, tracing and gathering of factual information that answers questions for problem-solving. It is more of an art than a science. The person involved in the investigation is a gatherer of facts, who must develop a hypothesis and draw conclusions based on the available information.

The term 'forensic investigation', according to Brightman (2009:18), refers to the use of science or technology in the investigation and the establishment of facts or evidence to be used in criminal justice or other proceedings. Hopwood *et al.* (2008:158) describe the investigation process as a systematic and comprehensive activity involving planning, information collection, the application of logic and exercise of sound reasoning. The end result of the investigation is the factual explanation of what transpired; or if it was an investigation of something that has taken place but remains a current issue, the investigation should reveal what is occurring.

The view of Sennewald and Tsukayana (2006:3) is that the art of investigation belongs to no single party, and no-one has all the precise answers on how an investigation can lead to the desired result. Many aspects are involved in the process of collecting information, applying logic and analysing the evidence, including intuition, luck, mistakes and gut feeling.

Pasco (2008:46) and Manning (2005:209) are of the view that all investigations share similarities, and each must pass from initiation to planning, execution, analysis, reporting and probably to prosecution. In some cases, the stages might overlap. Each stage plays a key role in the investigation process.

MacGregor *et al.* (1998:93) state that the Commercial Forensic Practitioner will rarely be controlling matters. The approach followed (what is done, when it is done and how much time it takes) will be directed *inter alia* by the client, legal advisers, law enforcement agencies, court orders and the judiciary.

Golden *et al.* (2006:22) state that the Commercial Forensic Practitioner's concerns are different from those of the auditor. Zimbelman & Albrecht (2012:497) state that Commercial Forensic Practitioners are concerned with the development of detailed factual information, derived from both documentary evidence and testimonial evidence, about who, what, when, where, how and why related to a suspected or known impropriety. All relevant

evidence is sought and examined. Zimbelman & Albrecht (2012:624) state that the evidence gathered and documented must be capable of withstanding any challenges that may be brought by adversely affected parties or sceptical regulators.

Golden *et al.* (2006:22) and Zimbelman & Albrecht (2012:570) state that based on the investigative findings, the Commercial Forensic Practitioner recommends and implements corrective actions. The findings may also be used in expert testimony (Zimbelman & Albrecht, 2012:627).

2.2 INVESTIGATION PROCESS FOR COMMERCIAL FORENSIC PRACTITIONERS

Generally Accepted Accounting Standards and International Financial Reporting Standards guide auditors in statutory audits of financial statements. In addition, auditors also have to base audit assignments on the International Standards on Auditing (ISA), which set out the audit process from accepting the client to reporting procedures.

Although Commercial Forensic Practitioners, as members of professional bodies such as the South African Institute of Chartered Accountants (SAICA) and/or the Independent Regulatory Board for Auditors (IRBA), which functions in terms of the Auditing Profession Act (No. 26 of 2005), can draw from these standards and codes of conduct in their day-to-day activities, there are differences in the professional responsibilities of auditors and Commercial Forensic Practitioners. Blumenfeld (1992:1) highlights and describes the differences between financial statement audits and forensic accounting.

Golden *et al.* (2006:21) and Zimbelman & Albrecht (2012:497) also highlight the differences between the roles and responsibilities of auditors and forensic accounting investigators. The auditor's main objective is to provide an opinion on whether the financial statements of an entity are fairly stated in all material respects.

The auditor is therefore required to design and implement audit procedures of sufficient scope and depth in order to detect material misstatements in the financial statements (Golden *et al.*, 2006:21). The auditor's responsibilities are clearly defined and laid out in the International Standards on Auditing (ISA). In terms of ISA 200 (2006:par. 2), "the objective of an audit of financial statements is to enable the auditor to express an opinion whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework". Arens and Loebecke (1994:205) and Marx *et al.* (2004:5-4) contend that the auditor is therefore required to plan and perform the audit in order to reduce the audit risk to an acceptable level that is consistent with the objective of an audit. The auditor is required to design and perform audit procedures in order to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base an audit opinion. (ISA 200, 2006:par. 24).

By contrast, the Commercial Forensic Practitioner is concerned with the detailed development of factual information derived from evidence obtained from the investigation of allegations or irregularities reported (Golden *et al.*, 2006:22). Forensic accounting procedures differ from an audit of financial statements in that sampling and materiality concepts do not apply in forensic accounting procedures. The Commercial Forensic Practitioner seeks and examines all relevant evidence (Golden *et al.*, 2006:22). "Accordingly, the scope of the investigation and the evidence gathered and documented must be capable of withstanding challenges that may be brought by adversely affected parties or sceptical regulators" (Golden *et al.*, 2006:22). The most important similarity between an auditor and a Commercial Forensic Practitioner, according to Golden *et al.* (2006:22), Kranacher *et al.* (2010:450) and Singleton *et al.* (2006:91), is that they both need to be independent and objective.

According to Oberholzer (2002:44) there is a growing convergence of forensic accounting and regulatory auditing. The increase in the numbers of fraud auditors resulted in the establishment of the Association of Certified Fraud

Examiners (ACFE). Certified Fraud Examiners (CFE) gather evidence, take statements, write reports and assist in investigating fraud. The ACFE has developed Professional Standards and Practices for CFEs. Oberholzer, (2002:46) notes that these Professional Standards and Practices include standards on independence and objectivity, due professional care in fraud examinations and confidentiality.

The auditor is guided in respect of work acceptance; quality and risk management issues and audit procedures by the International Standards on Auditing. Marx (2004:1-8) and Arens (1994:111) state that auditing is an attest function, and the client and third parties may rely on an auditor's report. There is limited room for deviation within the responsibilities of auditors. Kranacher *et al.* (2010:449) compares the responsibilities of auditors and Commercial Forensic Practitioners and points that the latter can limit their responsibilities in accordance with the nature of the engagement to a much greater extent, provided that due care is exercised and no negligence is involved.

Kranacher *et al.* (2010:499) contends that the report issued by a Commercial Forensic Practitioner is in most instances prepared for the sole use of the client, and due to third party liability and the confidentiality of the information contained in the report, the client needs permission from the Commercial Forensic Practitioner to provide it to third parties. Burton (1931:1) states that although techniques similar to those used in financial statement audits can be used by Commercial Forensic Practitioners in order to perform investigations, the objective of the procedures is different.

Nortjé (2010:2) maintains that the audit process applied in auditing financial statements from the beginning of an audit to the end cannot be used for an investigation by the Commercial Forensic Practitioner because the roles and responsibilities of an auditor and a Commercial Forensic Practitioner are different. The Commercial Forensic Practitioner should follow an investigation process from initial contact with a client until testifying in court as an expert witness.

Kranacher *et al.* (2010:137) and Gray (2008) contend that although the external auditor and the Commercial Forensic Practitioner both concern themselves with financial statements and accounting records and can share some similar goals, they have different responsibilities, roles, knowledge and skills.

The Canadian Institute of Chartered Accountants (CICA) established the Alliance for Excellence in Investigative and Forensic Accounting (IFA Alliance) to implement a specialist certification programme for Chartered Accountants practising in investigative and forensic accounting.

The IFA Alliance consists of a board of directors supported by several committees. The mandate of the IFA Alliance is to develop standard practices to improve the consistency and comparability of practice amongst chartered accountants performing investigative and forensic accounting engagements. The IFA Standards Committee is responsible for developing standard practices for investigative and forensic accounting engagements. These are the minimum standards that all chartered accountants must adhere to when conducting IFA engagements. To adhere to these standards, a process must be followed as in normal statutory audits. All forensic investigations must be meaningful, and all engagements must have well-defined objectives. The results of these engagements must be accurately documented and communicated. The investigation process can be divided in categories including:

- Strategy and planning;
- Evidence gathering;
- Analyses and interviewing; and
- Reporting and risk management.

Pasco (2009:2) states that the investigation of fraud and other economic crimes is often complex and involves facts and evidence of an across-the-board nature. Investigators should have a comprehensive understanding of

criminal, civil and labour law. A structured and flawless process is key to ensuring success.

According to Hopwood (2008:107), the investigation process should include meaningful and well-defined objectives; it should be properly and lawfully executed; it should be fair and impartial; and the results of the investigation should be documented and communicated accurately.

There are no blueprints for the perfect investigation plan because each investigation has a unique set of facts and circumstances that determine how it should be approached. There are, however, basic tools and guidelines that will be required during the course of the forensic investigation in order to prepare a case.

According to Singleton *et al.* (2006:4), the forensic accounting process involves the application of financial skills and investigative mentality to unresolved issues, conducted within the context of the rules of evidence. As a discipline, it encompasses financial expertise, fraud knowledge, and a sound knowledge and understanding of business reality and the working of the legal system. The development of the process has been achieved primarily through on-the job training as well as the experience of investigating officers and legal counsel. It is evident from the above definition of forensic accounting that forensic accounting is more than just the application of accounting principles, but is rather a multidisciplinary activity (Hopwood, 2008 6) that requires the use of knowledge from a number of disciplines including law, IT and taxation. Forensic accounting is therefore, according to Hopwood (2008:263), a process that involves the Commercial Forensic Practitioner in determining whether criminal matters, such as employee theft, corruption, falsification of financial statements, identity theft or insurance fraud, have occurred.

Kranacher *et al.* (2010:489) states that the Commercial Forensic Practitioner may include recommendations to the client, including remedial actions that can be taken to minimise future damages and risk of loss.

Marx *et al.* (2005:5-5) state that a statutory audit consists of a set of sub-processes, and Golden *et al.* (2006:579) similarly state that the investigation process will generally include:

- Engagement planning;
- Obtaining and analysing evidence;
- Drawing conclusions; and
- Reporting.

Kranacher *et al.* (2010:138) stated that throughout this process, it is very important to take care of the manner in which evidence is obtained. The use of evidence-acquiring tools or techniques should be evaluated as some of them may not be legal and thus render the entire body of evidence inadmissible, as mistakes in handling critical evidence cannot be rectified at a later stage.

Weil *et al.* (2008:4) furthermore note that the legal profession uses Commercial Forensic Practitioners to give advice in litigation matters to provide clarity to the court. In this way they attempt to resolve their disputes more appropriately. Weil *et al.* (2008:5) state that attorneys most often retain the services of Commercial Forensic Practitioners to quantify damages and lost profits and to investigate criminal wrongdoing. Various accounting standards, court rules, legislation and professional codes of conduct determine how an expert may or may not act in performing an investigation.

The Constitution of the Republic of South Africa, 1996 provides for the protection of a variety of rights, one of which is the right to privacy. This section protects private persons from arbitrary searches of their person and property. In the process of an investigation into the effectiveness of internal control measures, an employee's rights to claim protection could be very limited, or even non-existent, depending on the conditions of service in the employment contract.

Kranacher *et al.* (2010:448) state that another reason why approaches would differ is the purpose of the investigation. In a criminal matter, the purpose would be to collect evidence that would prove beyond reasonable doubt that the action of a person constitutes criminal conduct. The burden of proof required in civil and labour-related matters is determined on the balance of probabilities and is lower than the requirements in a criminal matter. Although the Constitution also has sections governing horizontal application, the majority of the sections have vertical application with respect to the manner in which a private individual is treated by state institutions and authorities.

Kranacher *et al.* (2010:448) maintain that the Commercial Forensic Practitioner does not operate in a single industry or type of investigation. Every investigation is different and is evaluated on its own merits. Thus, similar to registered auditors following an audit process, Commercial Forensic Practitioners should follow a process in order to minimise risk and ensure success of the investigation.

Silverstone & Sheetz (2007:80) explain that all investigations share similarities and must pass through similar stages. These stages are identified as initiation, planning, execution, prosecution and finally, reflection. In some cases these stages might overlap, and in some cases they might be curtailed. Silverstone argues that each stage plays a key role in how well, or how poorly, the actual outcome matches expectations.

Silverstone & Sheetz (2007:80), Kranacher *et al.* (2010:180) and Van Rooyen (2008:87) state that forensic investigations must have well-defined objectives and must be executed properly and in accordance with legislation. The results should be accurately documented and communicated. To achieve this, an investigation must be performed in distinct steps.

Silverstone & Sheetz (2007:80) note that the investigation process consists of the following five distinct categories:

- Initiation: Client and engagement acceptance;

- Planning: Investigation approach;
- Execution: Gathering evidence and document management;
- Prosecution: Reporting; and
- Reflection: Other completion activities.

Krstic (2009:299) puts it very well when he states that the financial scandals since Enron have led “to the forming of new regulative bodies and the appearance of a new profession – forensic accounting investigator, Commercial Forensic Practitioner. The application of the accounting concepts, principles and procedures in solving legal problems is often defined as forensic accounting”. Thus the way in which Commercial Forensic Practitioners assist in solving legal problems is to understand the legal realms within which they work and apply their accounting expertise and investigative skills to the evidence they will evaluate in this process. Krstic sets out the investigation process for Commercial Forensic Practitioners under the following headings:

- Client and engagement acceptance phase;
- Investigation phase;
- Reporting phase; and
- Testifying phase.

The investigation process followed by the Commercial Forensic Practitioner and the management of the process are probably the most important aspects of the Commercial Forensic Practitioner’s work.

Kranacher *et al.* (2010:448) explain that the Commercial Forensic Practitioner delivers a wide variety of services in different formats, depending on the nature of the assignment. In their view, it is important to have a well-designed and functioning investigation process in place that is actively managed by employees with different levels of responsibility. This process might require the involvement of civil, criminal and statutory audit expert assistance.

The result of either not having a proper process or having one that is not properly executed may be catastrophic for the case and have consequences for the Commercial Forensic Practitioner. A minor oversight during any of the phases could, for instance, result in the Commercial Forensic Practitioner engaging with a disagreeable client, or evidence being misconstrued or ignored.

Kranacher *et al.* (2010:449) state that this becomes problematic when the final confirmation of the expertise of Commercial Forensic Practitioners is tested as they testify as an expert in court. The impact of an adverse finding on the Commercial Forensic Practitioner's testimony impacts directly on the reputation of the person and the firm.

Hopwood *et al.* (2008:363) provide the following summary of the most important services that may be rendered by Commercial Forensic Practitioners:

- Proactive services to:
 - Prevent criminal activities in the client's workplace; and
 - Conduct due diligence tasks to ensure that contractual obligations are safely undertaken by the client.
- Reactive services, such as recovery of misappropriated funds;
- Dispute advisory services;
- Investigation services;
- Regulatory compliance;
- Fraud risk assessment and management;
- Expert witness services; and
- Forensic computer technology solutions.

Hopwood *et al.* (2008:17) state that the fields of expertise within different environments in which the Commercial Forensic Practitioner operates require specialist skills and appropriate investigation techniques, including but not limited to a combination of accounting and auditing techniques, and the use of

appropriate legal remedies and investigation techniques, which need to be utilised during an investigation to ensure eventual success for the client.

The investigation methodology followed from one investigation to the next will seldom be the same. However, there are common themes and phases in the investigation process that remain consistent, including professionalism, objectivity, impartiality, and clear and concise communication.

Hopwood *et al.* (2008:472) state that the investigation process of Commercial Forensic Practitioners may differ between firms and Commercial Forensic Practitioners. He also explains that the process will differ between criminal, civil and disciplinary proceedings. However, an assignment can start out as a civil investigation but be changed to a criminal assignment during the course of the investigation as evidence is obtained and more accurate facts are exposed. Even though a change in the mandate might be required, the process followed by the Commercial Forensic Practitioner must be sufficiently robust to continue to support the investigation under such circumstances and not need to be restarted as an investigation with a different scope to include criminal aspects, for example.

This study seeks firstly the most common investigation processes and secondly discusses the possibility of a standard forensic investigation process in South Africa. During the course of this assignment, reference is made to the standard practices for IFA engagements set by the Canadian Institute of Chartered Accountants. These practices are not enforceable in South Africa, but will nevertheless be referred to as a possible standard for adoption in the country.

Although Commercial Forensic Practitioners may follow different processes, depending on the circumstances of the assignment or specific firm prescriptions, general trends can be identified. An investigation usually commences with a client meeting. A formal written mandate will then be drawn up. It is important that both parties agree and sign off the mandate and

scope. The Commercial Forensic Practitioner should not commence with collating information until the scope and objectives of the mandate have been clarified and agreed upon. Following the diligent execution of the investigation, the Commercial Forensic Practitioner will report to the client on the results of the investigation in a predetermined format and determine the possibility of litigation.

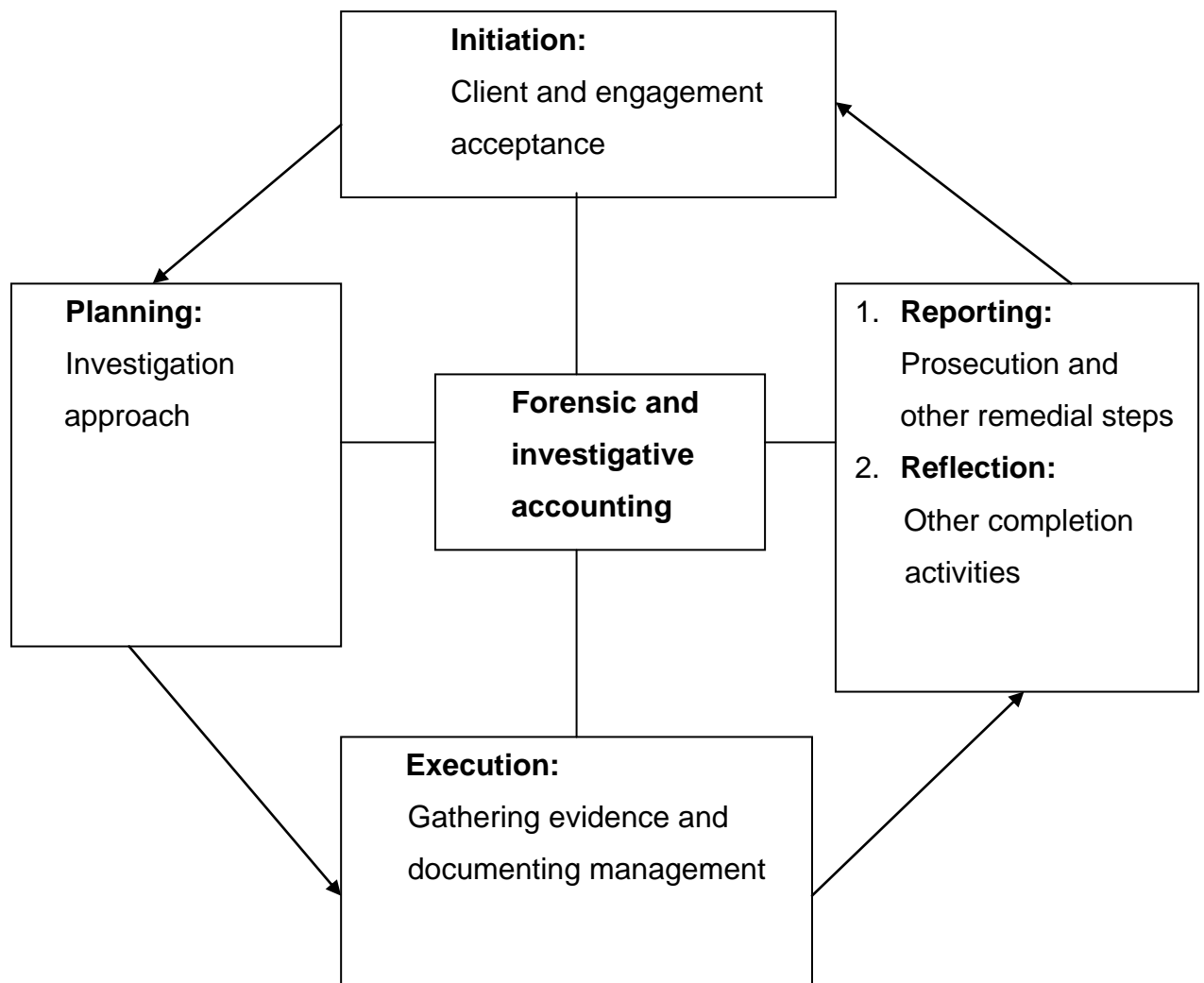
Van Rooyen (2006:297) identifies the following stages in a forensic investigation process:

- Receipt of assignment or allegation;
- Agreement;
- Preparation and planning;
- Information gathering;
- Verification and analysis;
- Documenting evidence;
- Legal proceedings;
- Determination and disbursement of disciplinary or corrective action;
- Prevention; and
- Application of human behavioural knowledge.

These common investigation processes will be used as the basis for discussing the most common investigation stages and the processes that form part of these stages.

The forensic accounting process is used as a strategic framework for action, as shown in Figure 1.

Figure 1: The investigation process for Commercial Forensic Practitioners as a strategic framework for action



Source: Adapted from Krstic (2009:299)

2.3 INVESTIGATION PROCESS FOR COMMERCIAL FORENSIC PRACTITIONERS COMPARED WITH THE INTERNATIONAL STANDARDS ON AUDITING

The idea of having some sort of picture of process is not new. In the auditing profession, all practitioners are required to conform to the standards of International Standards on Auditing. In Canada, forensic practitioners are required to make use of the requirements of the Canadian Institute of Chartered Accountants.

This section compares the process used by Commercial Forensic Practitioners with the International Standards on Auditing.

2.4.1 Client acceptance

The demands and risks associated with forensic accounting investigation and auditing the financial statements of public companies have changed dramatically over the past years. The recently publicised financial scandals have far-reaching implications for the regulation of the accounting profession and corporate governance.

Prendergast, J.D. (2010). stated that the objective of a client acceptance programme, is to “gain insight into the prospective client’s past business practices, the integrity of the management team and to identify any issues that may create a breach of the Commercial Forensic Practitioner’s professional obligations”.

The client and engagement acceptance phase can be categorised and will be discussed under the following headings:

- Meeting the client and understanding the requirements;
- Considering independence; and
- Other administrative and agreement considerations.

2.4.1.1 *Meeting the client and understanding the requirements*

Greene (2010) states that an initial meeting is required between the Commercial Forensic Practitioner and the client in order to define the terms of the engagement. He further explains that the Commercial Forensic Practitioner must determine and understand the “elements of the case to be proved” and more specifically the “elements to be proved as part of the financial investigation”. These considerations are used to determine the client’s expectations, which include important dates so that the Commercial Forensic Practitioner can understand the timeline and develop an associated action plan.

The activity of meeting the client to understand the requirements during the client and engagement acceptance phase appears to be obvious, but other more strategic decisions may need consideration. CA.IFA (2006:5), for example, suggests that accountants should also consider whether the investigation team has the collective ability, skills, resources and time to perform the investigation, as well as any possible constraints that could restrict the investigation team in performing the required work.

2.4.1.2 *Considering independence*

Krstic (2009:299) comments that “a high degree of independence and objectivity is expected of the Forensic Accountant, in accordance with the ethical codex for professional accountants”. Before commencing an investigation, Commercial Forensic Practitioners should consider their ability to be independent and objective.

MacGregor *et al.* (1998:95) state that “an expert should not accept instructions in any matter where there is an actual or potential conflict of interest”. This could occur where the accountant has an interest in the opposing party or in the potential client. These appear to be, in essence, different forms of conflict. The former can be referred to as a potential conflict, while the latter relates to independence, or in the stated case, the lack of independence. Both possibilities should be considered. Kristic (2009:299)

states that objectivity is the precursor to independence, while Zysman (2010) states that the Commercial Forensic Practitioner must “perform a conflict check” as soon as the “relevant parties are established”.

It can therefore be deduced that the Commercial Forensic Practitioner must appear, in the eyes of a court, to have no interest in the matter from the perspectives of both the client and the opposing parties (MacGregor *et al.* 1998:98).

MacGregor *et al.* (1998:103) suggest that a common way to make this determination or perform this “conflict check” is to “look through the firm’s list of jobs”, but he does not believe that him this is sufficient, and a notice should therefore also be circulated to “all partners in a firm” (1998:104). Golden *et al.* (2006:296) suggest that a background search could also be done. MacGregor *et al.* (1998:104) further state that these considerations should be made throughout the course of the investigation or “life of a case” as more relevant parties become apparent.

The above discussion does not mean that the Commercial Forensic Practitioner must perform every investigation where conflict of interest does not exist.

Being independent is a specific requirement of any expert appearing before a court. It therefore stands to reason that the earlier any independence and objectivity issues are discovered, the better. Discovering such an issue during court proceedings could result in the credibility of the expert being undermined, which could result in the engagement, or rather the related findings, being inadmissible in court and hence redundant.

2.4.1.3 *Other administrative and agreement considerations*

MacGregor *et al.* (1998:104) state that the expectations of the client must be understood by the Commercial Forensic Practitioner. These expectations and

the requirements of the client should be documented and agreed in an engagement letter between the client and practitioner.

Golden *et al.* (1998:296) summarise certain minimum requirements for inclusion in the engagement letter, including:

- Name of client;
- Scope of services; and
- Fees.

Coenen (2009:30) notes that the fee will be determined by the number of hours spent in analysing documentation and information during the investigation. The client will be required to decide whether the expected fee and resultant work will provide the value needed to resolve the dispute.

Coenen (2009:32) further notes that the Commercial Forensic Practitioner will also have to consider whether the fee is worth the risk posed and resources required by the engagement.

Golden *et al.* (2006:297) also recommend that the client be kept appraised of the fees that will be charged.

CA-IFA (2006:5) further states that the nature of the report and the terms and conditions for the assignment should also be set out in the engagement letter.

The author is of the view that the needs and expectations of the Commercial Forensic Practitioner must be included in these terms and conditions. MacGregor *et al.* (1998:468) suggest a sample engagement letter. In this instance, the Commercial Forensic Practitioner may require the client to “deal promptly with every reasonable request by the expert for information”. This is clearly a necessity, as the Commercial Forensic Practitioner cannot perform a complete investigation without assistance from the client.

Much like MacGregor *et al.*'s (1998) requirement for continual conflict checking, as stated above, CA-IFA (2006:5) states that should the needs or requirements of the client change during the course of the investigation, these "material changes" should be documented in a "supplementary engagement letter". Any changes in the direction of the investigation and its related procedures should be agreed in a supplementary engagement letter. As with any agreement between two or more parties, a signed agreement is imperative setting out the understanding, requirements, and terms and conditions applicable to all parties to the agreement.

It is apparent that all risks of the assignment should be comprehensively considered by the Commercial Forensic Practitioner before accepting and commencing the investigation.

ISA 220 (Quality control for audits of historical financial information) (ISA, 2005) states that the "(a)ccptance and continuance of client relationships and specific audit engagements include considering:

- The integrity of the principal owners, key management and those charged with governance of the entity;
- Whether the engagement team is competent to perform the audit engagement and has the necessary time and resources; and
- Whether the firm and the engagement team can comply with ethical requirements".

Even though the above is applicable to statutory audits, the second point can be used in an investigation by Commercial Forensic Practitioners, namely that an engagement cannot be accepted if the Commercial Forensic Practitioner does not have the necessary skills, time and resources to perform the investigation.

This approach is confirmed by CA-IFA (2006:5) which states that IFA practitioners should have reasonable assurance that the IFA engagement team collectively has the necessary expertise, competencies, resources and time to perform the engagement.

In some circumstances, the extension of the scope of the investigation into other entities and/or related parties may be required. In such circumstances, independence and conflict searches are required to be extended to ensure that the Commercial Forensic Practitioner maintains absolute independence and an unbiased approach.

The client has a right to freely choose financial advisors, and precedence should be given to the client to appoint a preferred engagement leader. The considerations in this regard would include the client's previous experience and working relationship with a specific person, normal tender procedures, budgetary constraints and the specific knowledge and skills required.

Based on the aforementioned, the important processes for establish proper engagement are discussed in the next sub-sections.

2.4.2 Predication (Case initiation)

Golden *et al.* (2006:297) and Manning (2006:54) contend that there should be valid reasons to even consider commencing an investigation. This is referred to as "predication", which, according to the ACFE (2009:1-6) can be defined as "the totality of circumstances that would lead a reasonable, professionally trained, and prudent individual to believe a fraud has occurred, is occurring, or will occur. Predication is the basis upon which an examination is commenced. Fraud examinations should not be conducted without proper predication".

Golden *et al.* (2006:299) are of the view that a basic understanding of the issues on hand is vital to planning and gathering the right resources in order to execute the assignment. Although predication is defined in terms of fraud investigations, the same concepts apply to other forensic accounting assignments. Whether the assignment is an investigation or a dispute, the starting point is to identify whether there is an issue that needs to be investigated. During the initial call or meeting with a client, the practitioner would probably be able to gather information pertaining to the issues that require further enquiry and follow-up. It

is important to gain an understanding of the nature of the allegations. The objective of the initial meetings with the client is to gain an understanding of the client's business, including policies and procedures, the type of forensic accounting investigation required and much more.

Manning (2006:54) states that subsequent to the initial meeting with the client, the Commercial Forensic Practitioner defines the assignment. During this phase, the Commercial Forensic Practitioner must determine the elements of the case to be proved, formulate a hypothesis of what happened and then focus on those elements. It is important to emphasise that investigations are focused on identifying the truth as opposed to the conception of many that they are only designed to prove guilt.

MacGregor et al. (1998:104), as indicated above, state that setting expectations and goals during the initial meeting is important in order to determine the client's expectations of the financial investigation. This includes identification of the client's goals, namely, what the Commercial Forensic Practitioner envisages the investigation accomplishing and where the results of the investigation would lead. In some cases, the client is seeking a combination of reimbursement and custodial sentences. Once the goal has been clearly defined, the task of the Commercial Forensic Practitioner can be carefully defined. The expectations of the client might be either reasonable or unreasonable. Where the expectations are reasonable and rational, the outcome is generally satisfactory.

CA-IFA (2006:5) Standard Practice 200 provides guidance for investigative and forensic accounting engagements in respect of engagement acceptance. This standard practice guide requires a Commercial Forensic Practitioner to begin by establishing the parameters of the engagement with the client and documenting these parameters, including the role of the Commercial Forensic Practitioner, the purpose and scope of the engagement and the type of report to be issued. The allegations and/or the information available should therefore be assessed and evaluated to ensure that appropriate measures are taken to deal with the matter under investigation.

Renick (2007:64) states that the Commercial Forensic Practitioner should define the problem, the issues involved and the scope of the engagement well before execution of the task. A projection of the timeframe, cost and expected deliverables for each phase has to be determined. Van Rooyen (2008:89) states that these quality-control procedures will ensure that the Commercial Forensic Practitioner has a basic understanding of the allegations.

Understanding the issues at hand or the allegations assists in developing a strategy to deal with the issues (in other words, the approach to the investigation and the allocation of the required resources, including appropriately qualified personnel, estimated time, budget and other resources).

2.4.3 Consultation relating to service considerations

Kranacher *et al.* (2010:25) state that prior to the commencement of the forensic investigation, the Commercial Forensic Practitioner needs to consult with relevant experts in order to determine whether the specific forensic services can be rendered. Fouché (2010:18) states that dispute services, for example, may not be rendered for audit clients regulated by the Security and Exchange Committee (SEC), as the auditor may not audit its own work, in this instance, the dispute calculations.

Arens and Loebecke (1995:207) list factors to be considered when performing a client acceptance investigation, namely:

- Poor reputation and doubts about management's integrity;
- Significant management turnover;
- Experiencing problems with regulators; and
- Significant losses incurred by the entity.

McGregor *et al.* (1998:104) state the risks of not being able to deliver the required services. They contend that this might be due to the Commercial Forensic Practitioner:

- Not being suitably qualified;

- Tight deadlines set by the client that will be impossible to meet;
- Information and records required for the investigation not being available;
- Safety of staff, if this might be a high-profile case with unwanted publicity;
- Risk of not getting paid; and
- Hidden agendas by the client.

2.3.1 Independence and conflict checks

MacGregor *et al.* (1998:95), as stated above, emphasise the importance of ensuring that no conflict of interest exists if there might be a perception that the objectivity of the firm is likely to be impaired. Where there is a conflict of interest, the activities of the firm should be so managed as to avoid the work of the firm on behalf of one client adversely affecting that on behalf of another.

CA-IFA (2006:5) Standard Practice 200 par. 05 states that if investigative forensic accountants are aware of circumstances where their independence may reasonably be questioned, this should be disclosed to the client.

In terms of section 3.5 of the Accounting Professional and Ethical Standards Board (APESB) (2008:5), a member is required to comply with independence as defined in this standard. The member is required to be independent in mind and in appearance. The standard defines independence as follows:

“(a) Independence of mind – the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and

“(b) Independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a Firm’s, or a member’s, integrity, objectivity or professional scepticism had been compromised.”

Arens and Loebecke (1995:79) and Fouché (2010:13) support these definitions as stated in Standard Practice 200.

IAS 240 also states that an auditor should be independent both in mind and in appearance. An investigator's independence could be compromised by self-review and self-interest, as well as by advocacy, familiarity and intimidation. For independence to be achieved, the partners, staff members, their families and the service providers should be independent. In order to manage the risk and quality of an investigation, independence should continually be reviewed throughout the process.

Mouton *et al.* (2006:5) state that where IFA practitioners are aware of circumstances where their independence may reasonably be questioned, they should disclose these circumstances to their client. Golden *et al.* (2006:296) imply that additional research may need to be conducted in order to vet some potential clients.

The APESB (2008:5) notes that it is interesting from the standard that there is no legal requirement for an expert witness to be free of any relationship with parties to the proceedings. Expert witnesses are required to disclose matters in their report that will assist the court to decide the degree of independence of the expert witness.

According to Golden *et al.* (2006:296), it is important to perform a relationship review and conflict check. This process entails identifying the entity and party names for comparison with outstanding engagements. Any potential conflicts should be cleared, calls made and responses documented prior to accepting any engagement.

MacGregor *et al.* (1998:93) state that conflict of interest arises when there is a relationship with one of the parties to the investigation or dispute, for example:

- One of the parties to an action is a client;
- One of the parties to an action was a client; and

- One is already acting for one of the parties to an action as expert and where the individual or firm has an interest in the outcome of the action.

The major forensic accounting firms have conflict check procedures during which details of the client are noted, including the parent company of the client. The specific engagement details are also provided, that is, the nature, type and a brief description of the engagement. Parties that are known to be affected by the engagement are also listed. If any such relationships exist, consideration is given to whether the engagement can be performed or not. Any conflicts of interest should be disclosed and resolved with the client. If there are no conflicts, or once potential conflicts have been resolved, the forensic accounting professional can accept the engagement.

MacGregor *et al.* (1998:104) furthermore suggest that continuing conflict searches to be done regularly throughout the engagement to identify any conflicts of interest that may have arisen.

Ernst & Young (2010:24) contends that all engagements, whether for potential or continuing clients, should therefore be subject to confirmation related to potential conflicts of interest and independence issues prior to commencing the delivery of the forensic investigation services. The adversarial and contentious nature of many forensic service offerings means that forensic investigation engagements are more likely to come under the scrutiny of a legal process.

Ernst & Young (2007:41) contends that the potential for conflict of interest is present when services have been provided to two or more clients who:

- Have a direct or indirect personal or business relationship that might be affected by the services;
- Are on opposite sides of the same transaction;
- Have different interests that might be affected by the services; and
- When either a client or an outside observer might reasonably perceive that the practice's services for either or both parties might be affected by any of these relationships.

Zysman (2010:4) states that conflict checks also need to be performed throughout the forensic investigation as and when implicated parties are identified.

Ernst & Young (2010:10) states that a client acceptance procedure should be performed for each client, and the client risk should be considered when there is any significant change in circumstances (for example, change in directors or change in ownership)

Krstic (2009:299) comments that “a high degree of independence and objectivity is expected of Commercial Forensic Practitioners, in accordance with the ethical codex for professional Commercial Forensic Practitioners”. Before commencing an investigation, Commercial Forensic Practitioners should thus consider their ability to be independent and objective.

MacGregor *et al.* (1998:95) state that “an expert should not accept instructions in any matter where there is an actual or potential conflict of interest”. This could occur where the Commercial Forensic Practitioner has an interest in the opposing party or where the Commercial Forensic Practitioner has an interest in the potential client.

2.3.2 Knowledge of the client, its reputation and business activities

Arens and Loebecke (1995:25) and Jackson & Stent (2003:63) note that there are several reasons that accounting firms may not wish to enter into a relationship with a prospective client, including:

- The client may appear to be unethical or lack integrity;
- The firm may wish not to be associated with the “industry” or line of business in which the client operates;
- The client may have a reputation for poor relationships with its auditors and there may be a high risk of the Commercial Forensic Practitioner being sued;
- It may not be a sound business decision to engage with the prospective client; and

- The Commercial Forensic Practitioner may not have the necessary competence and skills.

Furthermore, there are definite risks associated with accepting work from clients, such as:

- Claims risks: incurring liability for damages;
- Reputational risk: public perception; and
- Commercial risk: profitability.

These are the primary factors to be considered, followed by other factors such as independence, conflict of interest, suitability of the client and appropriateness to accept the engagement. These pre-engagement risks are considered by the auditing environment prior accepting an engagement.

Meintjies-Van der Walt (2001:2) states that expert witnesses have been criticised most, from a judicial perspective, for bias towards the party by whom the Commercial Forensic Practitioner is employed. She further suggests that such bias might be used in cross-examination of expert witnesses to discredit their testimony.

Ernst & Young (2010b:12) explains that client acceptance and client continuance, whereby specific risks in relation to the potential client are assessed, are fundamental to service quality, managing risk, protecting a firm's people, meeting regulatory requirements and avoiding damage to the reputation of the firm.

MacGregor *et al.* (1998:468) highlight that many of the engagement risks identified can be mitigated by including limitations as well as terms and conditions in the letter of engagement. Significant risks that cannot be mitigated to an acceptable level should result in the Commercial Forensic Practitioner abandoning the case.

Arens and Loebecke (1995:207) contend that the determination of whether to accept the client's business will be based on the outcome of all the procedures set by the firm to determine whether the firm would be exposing itself to the identified risks.

2.3.3 Engagement agreements

MacGregor *et al.* (1998:468) are of the view that the engagement letter serves two primary purposes relating to malpractice liability. Firstly, it may define the scope and extent of the duties undertaken by the Commercial Forensic Practitioner on behalf of the client. Secondly, it may limit liability to third parties. It should include:

- Explanation of the purpose of the engagement;
- Objective of the engagement;
- Scope of the engagement;
- Time period covered by the engagement;
- Fees and billing arrangements;
- Services not provided;
- Ownership of the investigation documents; and
- Mediation clause in case of disputes.

The client must sign the engagement letter so that there is a clear acknowledgment that he/she has understood the terms of the engagement.

Circumstances may require the scope of the investigation to be extended. In such circumstances, the Commercial Forensic Practitioner has to ensure an unbiased approach through continuing independence and conflict searches. Furthermore, the extension of the scope of the investigation would necessarily entail increases in time spent and an adjustment in the fees to be charged to the client. Such extensions and fee arrangements should be detailed in an amended and/or supplementary engagement letter to ensure proper communication and no disputes arising as a result of unpaid fees.

ISA 210 provides guidance to the auditor in the preparation of engagement letters relating to audits of financial statements. The guidance is also applicable to related services. When other services such as tax, accounting, or management advisory services are to be provided, separate letters may be appropriate.

Par. 2 of the statement highlights that both the auditor and the client should agree on the terms of the engagement. The agreed terms would need to be recorded in an audit engagement letter or other suitable form of contract. Golden *et al.* (1998:296) and Van Rooyen (2008:91) contend that the requirement for agreeing on the terms of the engagement is also supported by the need to obtain a clear mandate as to what is required of the investigation.

This standard (ISA 210:par. 6) provides the auditor with guidance on the principal content of an engagement letter, including the “objective of the audit of financial statements; management’s responsibility for the financial statements; the scope of the audit, including reference to applicable legislation, regulations, or pronouncements of professional bodies to which the auditor adheres; the form of any reports or other communication of results of the engagement; and unrestricted access to whatever records, documentation and other information requested in connection with the audit”. Par. 7 of ISA 210 also mentions that the auditor may wish to include the basis on which fees are computed and any billing arrangements. This standard may to some extent be applicable or considered when drafting engagement letters for forensic accounting engagements.

Golden *et al.* (2006:296) state that an engagement letter must include at least the name of the client, the scope of services, fee arrangements and possibly indemnification and reference to legal matters.

MacGregor *et al.* (1998:104) state that the expectations of the client must be understood and confirmed by the Commercial Forensic Practitioner. These

expectations and the requirements of the client should be documented and agreed in the engagement letter.

The client should be given regular feedback on progress with the investigation. A forensic accounting investigation remains a business transaction; it is critical for the client to be aware of and understand progress on the matter and to take corrective action as and when pertinent information becomes available.

Golden *et al.* (1998:296) summarise certain minimum requirements for inclusion in the engagement letter, namely:

- Name of client;
- Scope of services; and
- Fee arrangement.

Coenen (2009:30) notes that the fee will be determined by the number of hours spent in analysing documentation and information during the investigation. The client will be required to decide whether the expected fee and resultant work will provide the value needed in resolving the dispute.

Coenen (2009:32) further notes that the Commercial Forensic Practitioner will also have to consider if the fee is worth the risk posed and resources required by the engagement.

Golden *et al.* (2006:297) also recommend that the client should be kept apprised of the fees that will be charged.

CA-IFA (2006:5) states that “the nature of report” and “the terms and conditions” for the assignment should also be set out in the engagement letter.

In addition, the needs and expectations of the Commercial Forensic Practitioner must be included in these terms and conditions, as reflected in the

sample engagement letter suggested by MacGregor *et al.* (1998:468); for example, the Commercial Forensic Practitioner requires the client to “deal promptly with every reasonable request by the expert for information”. This is clearly a necessity, as the Commercial Forensic Practitioner cannot perform a complete investigation without assistance from the client.

Much like MacGregor *et al.*'s (1998) requirement for continual conflict checking, as stated above, CA-IFA (2006:5) states that should the client's needs or requirements change during the course of the investigation, a “supplementary engagement letter” should document any of these “material changes”. Therefore, any changes in the direction of the investigation and its related procedures should be agreed in another engagement letter. As with any agreement between two or more parties, a signed agreement is imperative setting out the understanding, requirements and terms and conditions applicable to all parties to the agreement. It is apparent that all risks of the assignment should be comprehensively considered by the Commercial Forensic Practitioner before accepting and commencing the investigation.

Ernst & Young (2010:29) states that reporting aspects of the engagement and access to the Commercial Forensic Practitioner's work product should also be covered by engagement letters.

The engagement letter is a formal written agreement mandating the Commercial Forensic Practitioner to perform the tasks in a diligent way, and should be compiled and signed by both parties.

The engagement letter must clearly state the terms and conditions in order to avoid any misunderstanding or to create an expectation gap.

The Canadian Institute of Chartered Accountants (CICA) sets specific guidelines of factors to be taken into consideration and information to be included in all mandate letters.

MacGregor *et al.* (1998:104) state that the essential aspects of the parties to be contained in the engagement letter are to identify the service provider and to identify the client.

Golden *et al.* (2006:296) state that the scope of the investigation should form part of the engagement letter, as follows:

- Clearly describe the deliverables, thus the end product;
- Identify the recipients of the deliverables;
- Indicate and explain the timetable applicable;
- Clarify the client responsibilities; and
- Clarify the fees and the fee arrangements.

Golden *et al.* (2006:296) explain that where possible, negotiations regarding liability should be considered, including:

- Provision in the contract if the scope or deliverables changes;
- Clarification of the dispute process and the jurisdiction if a dispute arises;
- Clarification of the process if amendments or extensions to the contract are required; and
- Organisational policies that should be adhered to.

Van Rooyen (2008:91) suggests that policies on matters such as confidentiality and the code of ethics should form part of the engagement letter.

Certain aspects of the engagement should be reviewed on a regular basis as part of a quality review, such as the nature of the deliverables required and the scope or limitations thereof.

Golden *et al.* (2006:296) indicate that the investigator should consider obtaining the signature of the legal counsel as well as the client who ultimately pays the fee.

All the above are only guidelines available to Commercial Forensic Practitioners. A standard engagement letter cannot be enforced on the South African industry, as each engagement will vary from the previous one, and each firm will need to develop its own standard mandate based on the guidelines set out above.

2.3.4 Planning a forensic engagement

Arens and Loebecke (1995:151) and Jackson and Stent (2003:7) state that planning an audit involves establishing the overall strategy for the engagement and developing an audit plan. The approach to forensic investigations would be similar. Adequate planning benefits a forensic investigation in many ways, including:

- Identifying the objectives of the engagement;
- Obtaining sufficient understanding of the circumstances of the engagement and events giving rise to the engagement;
- Obtaining sufficient understanding of the context within which the engagement is to be conducted;
- Identifying any limitation of scope where access has been denied or information cannot be obtained or provided; and
- Evaluating the resources necessary to complete the work, and identifying a suitable engagement team.

The execution of the investigation must be done in accordance with the approved plan; any deviations from the plan must be documented and communicated to the client.

Planning must be updated regularly to ensure that new developments or investigation areas are included in the plan and communicated to the client.

Manning (2006:54) states that when extending the original scope of work, the Commercial Forensic Practitioner must consider the following:

- Developing hypotheses, as applicable, for the purpose of addressing the circumstances and context of the engagement;

- Identifying the approach, procedures and techniques that will allow the Commercial Forensic Practitioner to meet the engagement objectives within the constraints of time, cost and availability of information;
- Identifying financial and other information relevant to the engagement and developing a strategy to acquire such information; and
- Determining the impact of the nature and timing of any reporting requirements.

Golden *et al.* (2006:42) notes that the Commercial Forensic Practitioner should take several considerations into account during the planning phase of the engagement, including:

- Nature of the allegations;
- Evidence required to prove the allegations;
- Type of evidence required (such as records of witnesses); and
- Acquisition of such evidence.

Arens and Loebecke (1995:151) and Van Rooyen (2008b:16) state that proper planning of a forensic engagement is necessary to ensure that information gathering is done in a systematic way. Specific attention should be given to the following important aspects during the planning phase of the investigation:

- Complexity of the engagement;
- Availability of resources including engagement staff;
- Required equipment and tools;
- Budget or availability of funds; and
- Other logistical requirements such as vehicles.

Jackson and Stent (2003:7) and Van Rooyen (2008:16) identify the need to understand the client environment during the planning phase, including policies, systems and procedures to ensure that the conclusions reached by the Commercial Forensic Practitioner are reasonable. At this stage it is also important to identify and secure important documents and available records and consider what other documentation may be required and seized. The

investigation should therefore be planned with the client's objectives in mind. All the information documented during the engagement activities phase should be used to prepare a feasible investigation plan. The evidence to be collected during the investigation is determined by the motive and the elements of the crime.

Golden *et al.* (2006:295) state that having a plan and working towards it serve to structure the engagement and that a basic understanding of the issues is the key to planning and gathering the right resources to execute the selected procedures. Planning should include:

- Work stream;
- Skills required;
- Assigning responsibilities;
- Review process; and
- Timelines.

The first part of planning the investigation must deal with administrative issues that will govern the investigation, including developing a schedule for internal meetings and a clear execution plan with timelines. Engagement files must be opened. Each member of the team must have an investigation diary to monitor the investigation progress and record the proceedings in which they participate.

Comer (1998:45) maintains that planning extends to making assumptions based on known facts of what might have occurred and therefore such assumptions have to be tested to determine whether they the truth and if they can be proved. In testing the assumptions, the approach will be to analyse the available data, create a theory, test the theory, and refine and amend the theory tested. The assumption created will form the basis of an investigation plan, which includes the identification of information and documentation needed to support or refute the allegations.

During the planning phase, a Commercial Forensic Practitioner must also consider potential problem areas, such as missing documents, and adopt strategies to mitigate such risks.

Wells (2003:2) states that the investigation process assumes that all fraud cases will result in litigation. This places the burden on Commercial Forensic Practitioners to ensure that their actions can be defended in a court of law. Evidence must be gathered legally; witnesses may not be threatened or coerced; and confessions must be obtained voluntarily. These aspects are important to consider in the planning phase of the investigation as they could influence the timing, extent and nature of procedures to be performed during the investigations.

Golden *et al.* (2006:299) contend that the Commercial Forensic Practitioner should obtain a basic understanding and knowledge of the applicable laws in relation to the specific issues related to the case. If an alleged crime is being investigated, certain elements need to be proved by the Commercial Forensic Practitioner's report. If these aspects are not included in the planning phase, the ground work required might not be performed during the investigation process, resulting in a predicament when the final forensic report is being prepared if crucial evidence was not collected and rework is required.

ISA 300 (2004) states that the auditor should plan the audit so that the engagement will be performed in an effective manner. Similarly, CA-IFA (2006:7) Standard Practice 300 requires the forensic accounting practitioner to plan the engagement adequately. Par. 02 of the standard explains the uniqueness of each investigative and forensic accounting engagement and the need to customise and adapt as the engagement progresses, requiring the continual application of professional judgement. The standard highlights the need for a forensic accounting practitioner to identify the objectives of the engagement and the circumstances that gave rise to it as part of the planning. This view of planning for effectiveness is also supported by Golden *et al.* (2006:295), who maintain that having a plan and working according to it serve

to structure the engagement. The objective of any forensic accounting investigation assignment is to apply investigative techniques that produce investigative results that can withstand scrutiny by the client, legal counsel, and regulatory and judicial authorities (Golden *et al.*, 2006:295). Before a forensic accounting investigator can even start searching and gathering information, he/she must first know the allegation, the evidence needed, the witnesses to call, and the laws and regulations that need to be adhered to (Van Rooyen, 2008:91). On the subject of witnesses, Van Rooyen (2008:94) maintains that an investigator must consider from the onset of the investigation the sequence of the interviews that should be conducted with witnesses or suspects.

According to Silverstone and Sheetz (2007:119), a good investigative plan should have three major goals, namely, to maintain focus, control growth and promote adaptability:

- Focus: a strong investigative plan should focus the efforts of the Commercial Forensic Practitioner in line with the goals of the investigation. A strong focus ensures that neither duplication of investigative efforts nor oversight of leads hampers the progress of the case;
- Control: financial crime investigations are living, breathing entities. Once they are brought to life, they take on a character of their own. If the Commercial Forensic Practitioner lets them, they will grow and attach themselves to every case in the filing cabinet. A strong investigative plan should recognise this characteristic of fraud investigations and help the investigator to manage it. It is not always preventable; however, careful management through planning can control its disastrous effects on the underlying investigation; and
- Adaptability: financial crime investigations evolve. They may grow or they may shrink (the latter is very rare). In whatever direction, they will change. For this reason, a good investigative plan must have built-in adaptability. Without adaptability, a slight change in the circumstances surrounding the investigation will render the plan useless. The plan has to be reevaluated at every stage of the investigation.

The plan for gathering information should take into consideration:

- Client's document retention policies and compliance;
- Storage locations;
- Imaging technologies used;
- Existence and storage of employee files;
- Organisational charts and reporting hierarchy;
- On- and off-site storage media;
- Backup procedures; and
- System changes.

Planning also comprises the examination of previous existing investigation files or allegations related to the investigation. Failure to do so could lead to duplication of work.

The most important consideration in the planning phase related to fraud investigation, particularly organised fraud, is to recognise the value of teamwork.

Reuter & Truman (2004:9) state that it is difficult to establish the amount of money laundered through the global financial systems. According to them, the United States Treasury reported on anti-money laundering efforts in 2001, including seizures of money laundering-related assets totalling US\$386 million and forfeited assets totalling S\$241 million. Such crimes are complex in nature and frequently require cross-border investigation. It is therefore contended that a Commercial Forensic Practitioner will seldom be able to handle an entire case of organised fraud without working as part of a team. Thus, team planning must be considered carefully. Pre-planning cannot rule out compromise, but it can relocate the task of assessing operational compromise. Regardless of how well the planning stage is undertaken, the investigation will be in a constant state of fluctuation. Changes in direction happen largely because of the nature of the investigation process. As the investigation continues, the knowledge of the Commercial Forensic Practitioner about what

has happened evolves to include new facts, theories and knowledge. A strong but flexible investigative plan makes it possible to control the flow of information that occurs during the investigation and manage the massive amounts of evidence.

2.3.5 Planning engagement scope

CA-IFA (2006:7) Standard Practice 300 provides guidance to the forensic accountant planning the scope of the engagement. The standard requires the Forensic Accountant to consider the approaches, procedures and techniques that will allow the practitioners to satisfy the objectives of the engagement.

CA-IFA (2006:7) refers to numerous aspects of planning and states that the planning activities should include:

- Identifying the objectives of the assignment;
- Obtaining an understanding of the background and history surrounding the work, as well as the context in which the dispute occurred;
- Identifying any limitations of scope, such as missing information;
- Organising the resources and team required to perform the work including supervision; and
- Management and supervision of these resources.

Ernst & Young (2010:8) emphasises the need to be cautious and not over-define the scope. The recommendation is to adopt a flexible approach, unless constrained by fees, but at the same time challenge any proposed limitation of scope consistent with objectivity and proper investigation. In determining the engagement scope, it is necessary to consider the interim findings and the continued revelation of facts and circumstances. Experience in practice has shown that it is not practical to prepare detailed work plans because of the danger of falsely assuming facts and circumstances and inappropriately setting expectations. This could also compromise objectivity by making assumptions about future matters and the outcomes of the work. The most important factor is that Agreed-Upon Procedures as per the International Standard on Related Services (ISRS) 4400 are not appropriate for investigating fraud.

2.3.6 Determining appropriate staffing

Hopwood (2008:5) and Du Plessis (2001:4) concur that the service rendered by a Commercial Forensic Practitioner is an area of specialisation in a multidisciplinary profession, comprising professionals from various fields, including but not limited to accountants, auditors, lawyers, information technologists and individuals formerly employed by investigating agencies. A forensic investigation team could consist of a team leader who is a Commercial Forensic Practitioner, an accountant or auditor, a legal expert and an IT expert. The engagement leader and team should have the required skills and competence to execute the mandate.

Van Rooyen (2008:94) states that probably the most important consideration during the planning of a fraud investigation is putting together a team.

2.3.7 Project management

Greene (2010:89) states that engagement planning can commence as soon as the Commercial Forensic Practitioner's initial interaction with the client has taken place.

A combination of the thoughts of Greene (2010) and CA-IFA (2006:5-6) suggests that this initial meeting with the client, as discussed above, is the opportunity to obtain:

- Understanding of the nature of the work;
- Client's requirements and expectations;
- Timelines; and
- Information and evidence potentially available, including documents, contracts, laws, regulations, parties involved and the documents setting out any acceptable behaviour that was deviated from to result in the dispute.

Initial planning will take place prior to the completion of the engagement letter, because the engagement letter will set out certain procedures and documents required during the investigation.

CA-IFA (2006:5) states that the planning activities are not completed following the signing of the engagement letter and that these procedures are ongoing during the entire course of the engagement.

CA-IFA (2006:8) states, and Greene (2010) furthermore suggests, that the Commercial Forensic Practitioner must “brainstorm” ideas and think creatively in breaking down the investigation into smaller pieces and seeking “creative ways” to finish the engagement. These smaller pieces of the investigation can be delegated to the various members of the engagement team, as appropriate, while ensuring that adequate supervision and review of the work is maintained. The planning of an investigation includes numerous aspects, including:

- Deciding on what documents to obtain and analyse;
- Storage and referencing of all evidence;
- Procedures that should be performed; and
- Administrative and logistical issues such as staff and timing.

Van Rooyen (2004:16) explains that among other factors, the complexity of the investigation and the available resources should receive specific attention. He further states (2008:92) that specific attention should be given to issues that need to be resolved beforehand such as:

- Immediate recovery of funds or chance to freeze any funds;
- Any bodies to be informed, such as the Asset Forfeiture Unit; and
- Identification of the probable use of search warrants and the preparation of such warrants.

Files on the client should be reviewed regularly, thus decreasing the risk of duplication and rework.

Silverstone and Sheetz (2007:126) state that the following factors are of importance to facilitate an effective investigation:

- Obtain sufficient knowledge of the client’s business. Knowledge of the underlying structure of the business can reveal a number of basic facts

about the business and its operations, such as who makes the decisions and where sensitive information is stored;

- Obtain sufficient knowledge of the accounting system. It is important to understand the accounting system and the related processes, possible bypasses and authority required. The process of converting data from the initial entry to information reporting should be understood to be able to do thorough testing;
- Obtain sufficient knowledge of the internal control system; to establish if and how controls were bypassed, it is important to understand these basic controls; and
- Obtain sufficient knowledge of the industry.

Silverstone & Sheetz (2007:127) state that the knowledge obtained of the business and of its processes should be compared to the industry as a whole, which could highlight certain focus areas.

Golden *et al.* (2006:22) also stress the importance of obtaining sufficient knowledge of the industry, the business, and the accounting and internal control systems.

Van Rooyen (2008:94) states that the investigator should consider and plan the sequence of interviews of witnesses and suspects. Specific attention should be given to:

- Investigation approach;
- Determination of needs and requirements in terms of equipment;
- Timeframes and assistance requirements; and
- Techniques and tactics that will be utilised to conduct the investigation.

CA-IFA (2006) Standard 300 (Planning and scope) requires the Commercial Forensic Practitioner to adequately plan the engagement. During the planning phase the investigator should:

- Obtain sufficient understanding of the objectives, circumstances and the context within which the engagement is to be conducted;

- Understand the scope and limitations of the investigation;
- Evaluate adequate resources;
- Plan and document the extent of the scope of the work; and
- Identify and supervise a suitable engagement team.

Arens and Loebecke (2004:7/1) state that an audit should be planned adequately and the audit approach (with respect to the nature, timing and extent of the procedures) should be documented. Similarly, an investigation should be planned and the investigation approach should be documented, including the techniques and tactics that are expected to be used.

Van Rooyen (2008:93) states that the investigator should apply discretion to ensure that the approach is practical at all times. The approach should be drawn up and make it clear what type of documentation should be gathered and, if required, seized.

Golden *et al.* (2006:305) stipulate that other considerations could influence the investigation approach, and the investigator could decide to focus on certain key aspects or risk-driven processes, such as unusual transactions, unenforced internal controls, transactions processed after hours, unusually frequent transactions, large round payment amounts, improbable addresses, unusually high petty cash transactions, fluctuating salary levels and unusual benefits for employees. Care should also be taken to review the following types of information, depending on the need and the practicality of obtaining such information:

- Background checks through company and public records;
- Personnel files;
- Accounting records approved by suspects;
- Job descriptions and delegations of authority;
- Expense statements and claims;
- Company computers (for electronic mail, correspondence files and internet access records);
- Public records (for example, credit, judgements, properties, vehicles);

- Company telephone records;
- Asset verification (estimate values); and
- Criminal records.

Golden *et al.* (2006:297) state that the engagement team must make an effort to keep the client aware of fees incurred. It may be a good idea to communicate fees in phases or in terms of fees per week. Fees and billing should be communicated regularly throughout the engagement to avoid surprises.

Golden *et al.* (2006:295) stress the need to communicate with the client, engagement manager and other role players. When large teams work on fast-moving assignments, it becomes necessary to communicate and coordinate on a continual basis. Ongoing client and team planning meetings are crucial, as the circumstances are generally dynamic and there may be relevant issues requiring re-defining as the engagement progresses.

Ernst & Young (2010:8) states that it is important to establish client communication protocols by identifying who should be involved in specific communications. Progress must be monitored and communicated timely to avoid surprises. It is essential to establish timelines and frequency of communication.

Hamman (2010:10) states that quality control reviews could be considered as part of planning to ensure that the evidence obtained and procedures followed are in accordance with the relevant legislation. Planning should thus also include milestone reviews and report writing.

The International Standard on Quality Control 1 (ISQC 1) (2009) stipulates the requirements in relation to Engagement Quality Control Review (EQCR). Quality and risk management are of the utmost importance in any forensic accounting engagement. The following should be reviewed on an ongoing basis to ensure consistency throughout the investigation process:

- Independence;

- Conflicts of interest;
- Scope of the investigation; and
- Limitations of scope and budget.

The client should receive regular feedback, and working papers and reports should be regularly reviewed by both the project and engagement leaders. Concurring reviews may be required depending on the individual firm's policy. ISQC 1 (2009) stipulates that policies and procedures should be developed in relation to the various kinds of investigations to comply with EQCR, which deals with the review of working papers and consideration of whether the findings in the report are supported by the working papers and evidence.

2.3.8 Gathering evidence

Singleton *et al.* (2006:299) state that a juristic trial is intended to establish the truth within a given scenario with different versions between the involved parties. In a criminal case, this proposition is the guilt or innocence of the accused person. The evidence introduced and handed to the tribunal to prove the charge must attain the facts beyond reasonable doubt. Importantly, the establishment of an absolute moral certainty is not necessarily required. The quantity and quality of evidence must convince an honest and reasonable layperson that the defendant is guilty after all the evidence has been carefully considered and impartially weighed.

Zeffert (2003:12) states that evidence, in general, is any relevant information or object that is admissible in court and has an influence on the outcome of the case. Only admissible evidence can have an influence on the outcome of a case.

Schwikkard (2002:14) and Van Rooyen, (2004:17) state that the test of admissibility is applied to all evidence. Any evidence that fails to comply with these requirements cannot be presented in a tribunal as evidence. There are

three principal tests of admissibility that must be met, namely the tests of relevance, materiality and competency.

Silverstone and Sheetz (2007:161) state that admissible evidence may *inter alia* include information obtained through consensual searches and search warrants. The Commercial Forensic Practitioner will therefore be exposed to various methods of securing documentary evidence.

It is probable that the Commercial Forensic Practitioner may encounter an unmanageable number of documents during the course of an investigation. It is of cardinal importance that a system for organising and collating evidence is methodically followed to ensure proper categorisation of the evidence, and also to ensure that the chain of custody is maintained and properly recorded.

Commercial Forensic Practitioners are tasked with obtaining specific evidence or facts to form the basis upon which decisions or judgements will be made by the relevant tribunal.

Evidence is regarded as anything perceptible by the five senses and any species of proof such as:

- Testimony of witnesses;
- Records;
- Documents;
- Facts;
- Data; and
- Concrete objects.

Schwikkard (2010:34) describes three important types of evidence:

- *Viva voce* evidence that is provided orally by a witness;
- Documentary evidence; and
- Real (physical/actual) evidence.

In considering and weighing evidence, a tribunal may in addition consider aspects such as the demeanour of witnesses, their bias for or against the accused, and any relationship to the accused. Thus evidence can be testimonial, circumstantial, demonstrative, inferential, and even theoretical when given by a qualified expert.

To be legally acceptable as evidence, it should be gathered lawfully, taking into account the provisions of the Constitution and other relevant legislation. Such evidence could include testimony, documents, objects or facts, which have to be competent, relevant and material to the case under review and the issues being litigated. Otherwise, on motion by the opposing side, the evidence may be excluded. In consideration of the admissibility of evidence, the Commercial Forensic Practitioner should take note and apply the rules in relation to the collation of evidence, which include the principles of relevance, materiality and competency. The relevance of evidence does not depend on the conclusiveness of the testimony, but rather to establish controverted facts.

Some of the evidentiary matters considered relevant and therefore admissible are:

- The motive for the crime;
- The defendant's ability to commit the crime;
- The defendant's opportunity to commit the crime;
- Threats or expressions of ill will by the accused;
- The means of committing the offence;
- Physical evidence at the scene linking the accused to the crime;
- The suspect's conduct and comments at the time of arrest;
- The attempt to conceal identity;
- The attempt to destroy evidence; and
- Valid confessions.

Singleton *et al* (2006:299) state that the materiality rule requires that evidence must have an important value to a case or prove a point at issue. The proficient gathering of evidence is the most important phase of an

investigation, as this process will prove either the guilt or innocence of the accused. If no evidence is found, there is simply no case.

Compliance with the rules in relation to the Law of Evidence should take precedence and at all times, otherwise the tribunal could declare the evidence to be inadmissible, and the outcome of the trial could be other than expected.

Section 35(5) of the Bill of Rights in the Constitution establishes another requirement that is of paramount importance in that “(e)vidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice”.

The Constitution, however, contains a limitation clause that may be used to submit evidence to court and obtain evidence. Section 36(1) of the Constitution (108/1996), stipulates that “such a right may be limited only in terms of general application to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom”.

Golden *et al.* (2010:300) state that the gathering and securing of evidence is vital in any forensic accounting assignment. The principles remain the same, whether it is a fraud investigation or a disputed matter. Information or evidence must be obtained legally and correctly in the first instance. Golden *et al.* describes the considerations in the investigation process, which should include:

- Documents and computerised records and information kept by the client;
- Types of information that should be obtained before the commencement of field work;
- Information that should be secured in advance of the field work (namely, securing backup media, and computers and/or network data to avoid the destruction of data once an investigation has commenced);

- Type and extent of background information to be gathered on the associated entities, their directors, customers of the client, secondary business relationships and the like before commencement of the field work; and
- Consideration of any third parties that may be required to be interviewed.

ISA 500 (ISA, 2004) provides guidance on audit evidence in an audit of financial statements, the quantity and quality of audit evidence to be obtained, and the audit procedures that auditors use for obtaining audit evidence. The standard requires the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion. Similarly, CA-IFA Standard Practice 400 (2006:9) states that the forensic accountant should apply an investigative mind set in the identification, pursuit, analysis and evaluation of information relevant to the forensic accounting investigation. The standard furthermore states that “IFA practitioners should identify, analyse, assess substance over form, and develop and test, as needed, hypotheses for the purpose of evaluating the issues in the IFA engagement.”

2.3.9 Searching for information

Van Rooyen (2008:93) contends that it is required to seize and secure original documentation. Such documentary proof would be required to withstand rigorous testing such as handwriting analysis. Court proceedings will normally depend on the originals being presented and proven as original. Van Rooyen (2004:17) furthermore highlights that all the information gathered during the process of the investigation must pass the test of admissibility before it can be presented in court. The test of admissibility is applied to all evidence to determine whether it is relevant, material and competent. Inadmissible evidence cannot be presented in court. It may, however, provide some background information that could assist in the collation of admissible evidence.

Van Rooyen (2008:16) points out that “searching and gathering information in a haphazard way will only lead to embarrassment and failure”, and evidence should be obtained in accordance with the predetermined investigation plan.

Golden *et al.* (2006:300-302) provide an extensive list of examples of documents and information that can be obtained, including organisational charts, electronic files, letters and other correspondence, financial statements, operational statements, public filings, press releases, tip-offs and complaints, computer hard drives, backup tapes, management letters, auditor’s working papers, contracts and agreements, minutes of meetings, bank statements, electronic mails and verbal discussions. Ostensibly, numerous sources can provide information, documents, data, statements and other items for the Commercial Forensic Practitioner to consider.

The Commercial Forensic Practitioner should ensure that all relevant evidence is obtained. This evidence may be either favourable or unfavourable to the client. As the Commercial Forensic Practitioner is independent and is required to follow an unbiased approach, all such evidence should be weighed and reported to the client and/or tribunal where such evidence may be presented. The truth takes precedence over the interests of individual parties, supported by an unbiased approach by the Commercial Forensic Practitioner. The Commercial Forensic Practitioner should maintain input to obtaining all relevant evidence throughout the gathering phase. The rules of discovery should be complied with, as discussed. The Commercial Forensic Practitioner should ensure that the correct skills, as quoted and/or tendered for, are applied to the execution of the assignment to ensure that the assignment is executed cost effectively in the shortest possible period. The Commercial Forensic Practitioner should ensure that appropriate quality control and managerial processes are followed and that a proper trail of the work executed is kept in the working papers and/or control file. As a last quality measure, Commercial Forensic Practitioners should determine any assumptions or qualifications and highlight such assumptions and/or

limitations in their report. To ensure a timeously executed investigation, timeframes should be adhered to and communication in relation to exceeding this timeline must be communicated to the client and authorities in advance.

2.3.10 Consideration of regulators, law enforcement and others

Van Rooyen (2004:16) points out that in terms of Section 35(5) of the Constitution, a Commercial Forensic Practitioner should always conduct investigations in a legally compliant manner. Guidance could be obtained from specific legislation in relation to the type of crime being investigated. The legislation regarding the crime under investigation will guide the investigator with respect to which aspects of the crime must be investigated. This guidance is obtained from knowledge of the elements of the crime set out in the specific legislation. The investigator could also be guided by case law. The Commercial Forensic Practitioner practising in South Africa should therefore have a working knowledge of the relevant legislation, which could include, but is not limited to:

- Constitution of the Republic of South Africa, 1996;
- Criminal Procedure Act (No. 51 of 1977);
- Criminal Law Amendment Act;
- Law of Evidence (Amendment Act No. 45 of 1988);
- Labour Law, including the Labour Relations Act (No. 66 of 1995) and the Basic Conditions of Employment Act (No. 75 of 1997). ; and
- Industry-related laws such as the National Gambling Act (No. 7 of 2004), the Inspection of Financial Institutions Act (No. 80 of 1998) and the Banks Act (No. 94 of 1990).

The Commercial Forensic Practitioner needs to consider and adhere to the provisions of all South African legislation throughout the investigation process. The following legislation is noteworthy and will apply in all investigations conducted within the borders of South Africa:

- Constitution of the Republic of South Africa, 1996

- In terms of sections 14(b) and (c) of the Bill of Rights (chapter 2 of the Constitution), everyone has the right not to have their property searched or their possessions seized.
- Section 35(5) of the Constitution (Exclusionary rule), provides as follows: “Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.”
- Criminal Procedure Act (No. 51 of 1977)
 - In terms of section 205, a judge, regional court magistrate or magistrate may, upon the written request of an attorney-general or a public prosecutor, require any person who is likely to give material or relevant information as to any alleged offence to appear in court for examination. However, if the person furnishes the information to the satisfaction of the attorney-general or prosecutor concerned prior to the court date, he or she will not have to appear before a judge, regional court magistrate or magistrate. In other words, the subpoena could specify, for example, that a bank should supply bank statements to the prosecutor before a specific date, failing which, the representative of the bank would have to appear before the judge, regional court magistrate or magistrate. The South African Police Service (SAPS) would serve an authorised subpoena on the bank. In order for the courts to place any reliance on bank statements furnished by the bank, the bank must provide an affidavit as proof that the bank statements can be relied upon (i.e. that they are a complete set of the records of the bank in relation to a specific account for a specified period of time). The subpoena should also detail that the records utilised for opening the account be furnished to the SAPS. This is important to establish who exercised control over the account.
 - Section 236 aims to prove entries in the accounting records and documentation of banks. Both these sections are important to the Commercial Forensic Practitioner. A requirement in order for the

bank statements to form part of the relevant evidence collated is that a subpoena would have to be served on the bank in order to obtain the bank statements.

- Search and seizure in terms of sections 20-25, which stipulate that:
 - The ambit of sections 20 and 21 of the Act deal with searches and seizures of articles. The general rule is that searches and seizures should, wherever possible, be conducted only in terms of a search warrant, issued by a judicial officer. This will ensure that an independent judicial officer stands between the citizen and the law enforcement official.
 - Section 204 allows prosecutors to ask the court to indemnify a witness against prosecution if such witness implicates him or herself in giving testimony against a third party.

2.3.11 Interviews and interrogation

Hamming (2010:13) states that interviewing is a technique applied in most investigations and forms part of the process of gathering evidence. A properly conducted interview could differentiate or eliminate suspects and witnesses. Interviews can fruitfully be employed from the inception of the investigation process. Importantly, the Commercial Forensic Practitioner should consider a number of issues during the early stages of an investigation, including the legal rights of the interviewee, the number of interviews to be conducted, and the roles and purpose of the interviews. Interviewing requires skill and experience in order to obtain results that are relevant, competent and material.

Hamming (2010:14) states that for interviews to be effective, the interviewer should have knowledge about both the facts and the interviewee. An interview could start by providing the rational basis for the interview, and the Commercial Forensic Practitioner could use 'open-ended' questions. This would assist in involving the interviewee in the interview and creating a sense of rapport and trust. Hamming (2010:15) emphasises the importance of making contemporaneous notes during an interview. The Commercial

Forensic Practitioner should have a written contemporary record, or preferably an electronic recording of the interview, provided that this is within the legal framework and that the interviewee has consented to it. The investigator should be objective in his/her assessment and comply with the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA) (No. 70 of 2002).

Gray (2008:122) states that the difference between an interview and an interrogation is that an interrogation is confrontational, whereas an interview is not. In either case, the interviewer records both the answers to the questions and physical behaviours of the interviewee, as discussed,

Gray (2008:123) contends that the purpose of interviews and interrogation is to obtain a signed confession, which must be a concise statement of guilt, and the statement must be made voluntarily. It should include a statement that the person signing the confession, for example, knew fraud was being committed and when it was being committed. It should also include an estimation of the monetary value of the loss or crime. Furthermore, the statement should obtain information from an individual that is pertinent to the allegation(s) or investigation, including admissions or confessions that could guide the Commercial Forensic Practitioner in the investigation; such information could also be valuable in a court of law. Furthermore, the Commercial Forensic Practitioner would need to secure the assistance of witnesses and victims at a tribunal or other enquiry

Therefore, in planning interviews, the questions should be designed to elicit information from interviewees to address the key investigative areas of interest and the desired outcomes. The questions should be written in order to assist the Commercial Forensic Practitioner by serving as a strategy and reminder of the issues to be discussed or specific points to be covered. A well-planned list should enhance the logical and smooth flow of dialogue between the parties and the Commercial Forensic Practitioner. It is important to create rapport and trust, but the Commercial Forensic Practitioner should

keep to the topic of conversation and control the conversation to maintain the parameters of the subject matter.

Sufficient planning is therefore vital before conducting an interview, and it therefore follows that the Commercial Forensic Practitioner should have thoroughly researched and prepared with respect to the background of the suspect, the facts of the matter and key focus areas where evidence may be required.

The interview should be conducted in a neutral location with minimum distractions or potential interruptions. The choice of location for the interview is critical, since it allows the interviewer to create an atmosphere conducive to trust, comfort and openness.

At the start of the interviewing process, the Commercial Forensic Practitioner should explain how the interview will be conducted and what is expected from the interviewee and also remind the interviewee of his/her constitutional rights in terms of the Constitution of the Republic of South Africa, 1996. These rights include the right to remain silent; the consequences of not remaining silent; the right of an accused not to be compelled to make any confession or admission that can be used in evidence against him/her; and the right to be represented by a legal practitioner.

The Commercial Forensic Practitioner should inform the interviewee that notes will be taken during the interview. This is done to ensure a common understanding of what was said; to have a record of the interview; to assist in compiling the report; and for verification at a later date. The notes should be reviewed and signed by the interviewee.

It is preferable to make an electronic recording the interview, but if the Commercial Forensic Practitioner decides to use video or audio recording devices, the interviewee has to be informed that the interview will be recorded.

Polygraph testing is a popular technique, but is inadmissible evidence in a South African court of law. The Commercial Forensic Practitioner should take care to conform with the relevant entities' human resources policy if such a test is administered.

The Commercial Forensic Practitioner, through experience, could recognise aspects from the conversation through the interpretation of body movements, facial gestures or other forms of nonverbal communication and the general demeanour of the interviewee. Because the nonverbal responses are primarily the result of subconscious reactions to events, many feel they are more reliable as an accurate portrayal of the truthful answers.

2.3.12 Maintaining chain of custody of evidence

Ernst & Young (2010:16) maintain that standard and robust procedures should be followed to preserve the integrity of evidence and the integrity of the chain of custody. In criminal investigations and engagements that may result in criminal prosecutions, legal requirements for handling evidence must be complied with.

Golden *et al.* (2010:300) emphasise the importance of document control and state that requesting, obtaining and maintaining document control are important aspects of any investigation.

CA-IFA Standard Practice 400 (2006:9) states the importance of maintaining the chain of custody of evidence. The standard states that the Commercial Forensic Practitioner should maintain the chain of evidence, including the origin, possession and disposition of all documents and other material, especially originals, that are relevant to the forensic accounting investigation. Par. 07 states that the Commercial Forensic Practitioner should establish adequate control and management procedures in order to safeguard the confidentiality, integrity and preservation of all documents and other material that either come into their possession or are created by the Commercial Forensic Practitioner and/or the team during the investigation process.

Singleton *et al.* (2006:299) and Van Rooyen (2008:93) state that once documentation has been seized, it should be carefully and thoroughly studied, analysed and catalogued in order to maintain the chain of possession. In essence, the chain of possession relates to “keeping record of people who handled the evidence and where it was kept”.

Greene (2010) emphasises that due to the variety of sources and the courts admissibility requirements, it is necessary to compile an inventory of the information obtained, using a tracking system to record document requests and their status (which can be followed up), as well as sorting and storing the documents obtained in a methodical, sequentially numbered, logical and organised manner. Tribunals frequently insist on the Commercial Forensic Practitioner providing an explanation of where evidence was obtained. It follows that the Commercial Forensic Practitioner should record, preferably in a register, where and from whom each piece of evidence was obtained, the date it was received and the name of the recipient.

Greene (2010) furthermore states that the evidence, whether documents, computer equipment or the like, should be stored in a safe and secure area.

Singleton *et al.* (2006:299) and Van Rooyen (2008b:93) state that all documentation used as evidence should be the original document, and a chain of custody should be maintained for each document.

Golden *et al.* (2006:293) and Van Rooyen (2008:16-17) state that documentary evidence and information can be obtained using various techniques, including search and seizure processes, at the scene of the crime or through interviews with relevant people.

Greene (2010) mentions various techniques, including requests from the client, its staff and/or legal team and through the discovery process. Any use of the discovery process should comply with rule 35 of the Supreme Court Act (No. 59 of 1959). In terms of rule 35(2), following the filing of a notice to

discover, the parties have 20 days in which to make the documents available to the opposing party.

Van Rooyen (2008:17) accurately notes that “knowing where to search for the first basic piece of information is crucial, and of equal importance is to know how to find this information easily and quickly”.

CA-IFA (2006:9) states that forensic accountants should establish appropriate control and management procedures to safeguard the confidentiality, integrity and preservation of all documents and other materials that come into their possession or are created during the course of a forensic investigation. Similarly, Commercial Forensic Practitioners should maintain copies of all documents and other materials relevant to the findings and conclusions and should also maintain appropriate records of all relevant information received orally.

Hamman (2010:19) states that the Commercial Forensic Practitioner should always take care and use the opportunity to photograph or create a video recording of evidence in its original state, which may include the office, third-party premises or equipment. These types of evidence could be useful when the case is presented to a tribunal. Sketches and contemporaneous notes can also play a significant role in maintaining the chain of custody.

Hamman (2010:27) furthermore states that any person who handles or examines the evidence needs to be accounted for. This should preferably be in writing through the utilisation of an evidence register.

2.3.13 Reliance on the work of others

CA-IFA (2006) Standard Practice 400 provides guidance to the Commercial Forensic Practitioner in relation to reliance on the work of others. The standard explains that during an engagement, the Forensic Accountant may rely on persons or firms with expertise relevant to the engagement. Thus, the Commercial Forensic Practitioner should evaluate the nature and level of intended reliance on the work and/or information of others. The Commercial

Forensic Practitioner also needs to consider the person or firm that they intend to rely on, their knowledge, expertise and competence, business and professional reputation, objectivity and independence, source of their information, reasonableness of assumptions and methodologies, findings and conclusions, and the relevance of the work and information to the objectives of the engagement.

CA-IFA (2006:10) states that Forensic Accountants should perform additional procedures to address or resolve factors influencing the engagement risk. Similarly, the Commercial Forensic Practitioner should not rely on the work of the individual unless satisfied that the risk factors have been addressed.

2.3.14 Analysis of documentation and information obtained

Golden *et al.* (2006:300) and Van Rooyen (2008:99) state that once information has been collected and recorded during the information-gathering phase, it should be reviewed and analysed to ensure that it conforms with the admissibility rules. During the course of the verification and analysis phase, the Commercial Forensic Practitioner will determine the relevance of singular pieces of information and the need to eliminate irrelevant information. The information-gathering and fact-finding phase of the investigation is pre-emptively continued by affording the Commercial Forensic Practitioner with the information needed to interview the subject, which could lead to successfully obtaining an admission.

Zysman (2010) contends that performing a forensic accounting analysis will be dependent on the nature of the assignment and could involve calculating economic damages; summarising a large number of transactions; performing tracing of assets; performing present value calculations utilising appropriate discount rates; performing a regression or sensitivity analysis; utilising a computerised application such as a spread sheet, data base or computer model; and utilising charts and graphics to explain the analysis.

The Commercial Forensic Practitioner could consider sorting, filter and other data-analytic techniques in order to understand the sequence of events, and

sophisticated software could be utilised to draw schematic and/or diagrammatic presentations, for example, to allow a tribunal to see the 'big picture' in complex investigations.

CA-IFA (2006:10) stipulates that the Forensic Accountant should take due care and evaluate the reasonableness and consistency of all estimates and assumptions used during a forensic investigation.

It should, however, be noted that Commercial Forensic Practitioners mainly base conclusions on factual findings that can be proved by evidence based on the admissibility rules. Estimates and assumptions should be limited.

2.3.15 Conflicting information and alternative theories

CA-IFA (2006:10) states that the forensic accountant may during the course of the evidence-gathering phase find conflicting information and alternative theories in relation to the subject matter. The Commercial Forensic Practitioner should evaluate all the information received during a forensic investigation and consider its relevance, reliability, reasonableness, completeness and consistency with other known engagement information.

2.3.16 Investigation methods

Singleton *et al.* (2006:129), Hopwood *et al.* (2012:469) and Van Rooyen (2008:96) describe various possible investigative methods that may be applied in order to reach a desired result, namely:

- Formulation of multiple working hypotheses based on the information available;
- Establishment of an audit trail; consideration should be given to the possibility that the reconstruction of some accounting records may be necessary for prosecutorial purposes;
- Consideration of the elimination of suspects from the suspect pool to ensure that no valuable time is wasted by interviewing and/or performing procedures that deliver results of no or negligible value;
- Establishing whether the issue is a once-off occurrence or has reoccurred; applying information-gathering tools such as interviewing suspects.

Interviews of everyone who has access to the information and systems should be conducted; and

- Considering electronic documents and the possible utilisation of the services of a computer forensic expert.

2.3.17 Documentary evidence

Silverstone and Sheetz, (2007:161) maintain that the submission of “best evidence” is a requirement for all cases before a tribunal. Best evidence does not refer to the most appropriate piece of evidence for a particular claim, but means the most appropriate claim. This means that all evidence submitted to prove a claim must be the original. Circumstances may occur where the original is not available. In such circumstances the onus is on the offering party to provide evidence to prove why the original is unavailable and that the copy is accurate.

The authenticity of evidence will undoubtedly be questioned by the tribunal and has to be proved by the party submitting the evidence. If this cannot be achieved, the evidence will be excluded as inadmissible.

Ordinarily, no evidence is admissible to prove the contents of a document except the original document. During an investigation process, original documents are safeguarded and working copies are generated for the purposes of investigative work.

There are exceptions to the rule which the Commercial Forensic Practitioner should keep in mind. In the event where it can be proven that only copies could be obtained and the originals could not be found during a search and seizure procedure, the copies will be allowed as admissible.

Section 233 of the Criminal Procedure Act (No. 51 of 1977) prescribes that the contents of a book or document of public nature is deemed to be admissible upon its mere production, which may be proven by means of an examined copy or extract, or what purports to be signed and certified as a true copy or extract by the office to whose custody the original is entrusted.

Client confidentiality clauses between financial institutions and clients prohibit such institutions to provide any party without authority any information, and therefore no physical document may be submitted to the tribunal.

Sections 205 and 236 of the Criminal Procedure Act (No. 51 of 1977) provide that a judicial officer can summons the responsible employee of the bank to appear before the court for questioning or to provide the court with an affidavit.

Circumstances may arise where evidence is not freely available to the Commercial Forensic Practitioner. In such circumstances, a search and seizure process is required. The provisions of the Criminal Procedure Act will have to be followed as discussed, except where specific legislation authorises such operations, including the Inspection of Financial Institutions Act (No. 80 of 1998) and the Banks Act (No. 94 of 1990).

Legislation places certain limitations on search and seizure procedures. The Constitution contains some provisions, which are overcome by difficulty. In terms of section 14 of the Bill of Rights (chapter 2 of the Constitution), every individual has a right to privacy. If it can be proved that the accused's privacy was invaded, the evidence thus obtained may be excluded from the case. Furthermore, section 36 of the Constitution should also be considered: where evidence is obtained in a manner that violates the Bill of Rights, the evidence obtained must be excluded if the admission of that evidence would render the trial unfair or be detrimental to the administration of justice.

In other words, if it is evident that the evidence needed will prove misconduct, sections 12 and 14 of the Constitution may be invoked.

Search and seizure should, whenever possible, be conducted only in terms of a search warrant, issued by a judicial officer such as a magistrate or judge, and should contain the wording as set out in section 21(1) of the Criminal Procedure Act (No. 51 of 1977).

Before a judicial officer will issue a search warrant, the officer has to consider whether reasonable grounds to issue the warrant exist. Furthermore, the judicial officer has to consider whether such article as the applicant is seeking through the search is included in section 20 of the Criminal Procedure Act.

The judicial officer has to ensure that the search warrant specifically indicates the article to be searched for and stipulate or direct the police officer or person who is authorised to carry out the search and seizure.

Commercial Forensic Practitioners are not regarded as police officers, and it may be argued that they may not form part of the search and seizure.

In the case of *Smit & Maritz Attorneys and Another v Lourens NO and others* (2002), it is evident that the applicant applied to set aside two search warrants that had been granted. The warrant was addressed to police officers and did not include the Commercial Forensic Practitioners that assisted in the search and seizure. The applicant questioned the validity of the search and seizure, as the Commercial Forensic Practitioners were not authorised to assist in the operation. The court decided that the files must be returned and could not be used as evidence.

The limitations regarding a search and seizure should be noted. It is very important to follow the correct procedures, as the evidence obtained may be deemed inadmissible and excluded by the court.

2.3.18 File documentation

CA-IFA Standard Practice 500 (2006:12) provides guidance in respect of file documentation. The standard prescribes that the working papers should be properly referenced to all information used and relied upon in carrying out the forensic accounting investigation. The standard lists the documents that should be retained on file, namely:

- Research, accounting, banking and other business records, and agreements;

- Pleadings;
- Criminal or regulatory charges, and other legal claims;
- Affidavits and discovery transcripts;
- Engagement letters and other correspondence;
- Reports issued;
- Schedules and calculations, including all necessary explanations; notes and other recordings of interviews, meetings and discussions; documentation of key issues considered and key assumptions made;
- Approach taken and specific techniques used; a record of the nature, extent and timing of procedures performed and the results of such procedures;
- Record of the identities of the individual(s) performing the IFA engagement and a record that the work performed by assistants was supervised and reviewed; and
- Where the work of others is relied upon, their findings and conclusions.

Ernst & Young (2010:14) states that documentation on file should explain the relevance of and demonstrate the approach adopted. The documentation and/or working papers should support all findings and underlying analysis.

CA-IFA Standard Practice 500 (2006:12) stipulates that the form and content of individual working papers are affected by matters such as the terms of the engagement, the nature of the report required, the nature and complexity of the subject business, and the needs in the particular circumstances for supervision and review of the work performed by any assistants.

2.3.19 Quality Management

Hill (2000:304) defines quality as “consistently meeting customers. This in turn, embodies decisions around specifying expectations and then consistently meeting these specifications for the products and services involved”.

ISA 220 (ISA, 2005) prescribes the auditor's responsibility in respect of the implementation of quality-control procedures that are applicable to the individual audit engagement. The International Standard on Quality Control (ISQC, 2009), ISQC1: Quality control for firms that perform audits and reviews of historical financial information, and other assurance and related services engagements, states that a firm has an obligation to establish a system of quality control designed to provide it with reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that the auditors' reports issued by the firm or engagement partners are appropriate in the circumstances. Although this standard is applied by auditors, it is worth considering adopting it for forensic accounting investigations.

The APESB (2008:5) provides guidance to members of professional bodies, such as chartered commercial forensic practitioners, who have adopted this standard and are providing forensic accounting services. In terms of section 7, a member in business who provides forensic accounting services should utilise a system of quality control that includes the relevant and applicable policies and procedures.

The APESB (2008:9) states that the member is required to prepare working papers that appropriately document the work performed and methods adopted in providing the forensic accounting service.

2.3.20 Quantification of loss

Hopwood *et al.* (2008:265) and Mendell (2006:110) state that in almost every fraud investigation, there is a need to quantify the financial loss suffered by the client. Loss quantification in the context of a forensic investigation is often somewhat more complex because of the large volumes of documentation and other correspondence in the full paper trail. The most elementary approach to loss quantification is to simply calculate the amount secured by the fraudster from the illegal act perpetrated. Losses are quantified from the evidence of actual or potential loss and the nature and value thereof; documentation supporting the transaction trail to support the losses; and witnesses who can

provide evidence to support the losses and who processed each transaction in the trail. A Commercial Forensic Practitioner will typically be utilised to quantify a loss, sum or damages in conjunction with other subject matter experts. Supporting documents have to be secured, preferably the originals. The nature of the loss/damage needs to be carefully reviewed to establish the actual prejudice caused. A root-cause analysis can also be drawn, which could be of significant value to the client.

2.3.21 Asset tracing and recovery

Mendell (2006:110), and Reuter and Truman (2006:27) state that during an investigation, the Commercial Forensic Practitioner must follow the trail on which the stolen funds/assets flowed. The Commercial Forensic Practitioner has to establish which assets have gone missing; where are they; and how can they be recovered. In the majority of cases, the client would like to recover the lost assets or funds as a priority. In such cases, the services of the Asset Forfeiture Unit should be engaged in order to recover the asset.

2.3.22 Supervision and Review

CA-IFA Standard Practice 300 (2006:7) is very explicit regarding the need for supervision. Par. 07 states that practitioners should properly supervise and be responsible for the work of their junior staff, agents or subcontractors. The standard explains that the nature, timing and extent of such supervision will vary with the complexity of the engagement and the experience of the persons assigned. It is critical for the engagement leader to review documentation prepared by the engagement team.

Ernst & Young (2010:17) state that the engagement leader should determine the form and extent of the review. This person should have equivalent or greater knowledge of the subject matter.

Niven (2002:100) notes that the cascading or communication of the process overcomes the people barrier. Communicating the process in the organisation entails “driving it” (the process) down into the organisation and giving all

employees the opportunity to demonstrate how their day-to-day activities contribute to the company's strategy.

Deetz (1992) argues that communication failure is an important cause of poor organisational performance. The ability to effectively communicate may itself be a source of competitive advantage, because it should be realised that no organisation's knowledge or strategy exists apart from, or succeeds without, its key human actors. This competitive advantage can be obtained if the process of the Commercial Forensic Practitioner communicates the organisational knowledge and strategy in a superior manner. Competitive advantage will last only to the point where all competitors use it equally well.

2.3.23 Reporting phase

The reporting phase is often referred to after the investigation phase, but these phases are often carried out simultaneously after each procedure is able to provide a conclusion.

CA-IFA (2006:14) states that the forensic accountant may communicate the findings in various ways, including written, verbal or visual, in draft or final version, either in point form or narrative, which can be done formally, by means of an affidavit or in letter form.

Zysman (2010) states that the report usually contains sections describing the nature of the assignment, scope of the investigation, approach adopted, limitations of the scope and factual findings with any supporting schedules, charts and exhibits.

MacGregor *et al.* (2008:106) state that the outlay and form of the report should be agreed with the client in the contract, as discussed. The report should be written formally and in such fashion that it is suitable for court purposes.

CA-IFA (2006:14) therefore requires the forensic accountant, and similarly the Commercial Forensic Practitioner, to ensure and be satisfied that the contents

and evidence match and that there is sufficient support for findings and conclusions. Commercial Forensic Practitioners must be satisfied that they have considered sufficient, if not all, information relevant to the case, and the findings should be presented in an objective and unbiased manner.

CA-IFA (2006:14) furthermore states that all findings should be recorded only when within the competence, skill and expertise of the Commercial Forensic Practitioner. If the report is written, CA-IFA (2006:14) notes that the following additional aspects should be included in the report, in addition to the recommendations of Zysman (2010): “name of the Commercial Forensic Practitioner and/or expert and firm designated in doing the work, the date of the report, the effective date for the findings, the circumstances” and background surrounding the assignment, the extent of the reliance on the work of others, any definitions of technical terms and their related explanations, and “any restrictions on the use of the report”.

Considering that the expert’s credibility is in question in court, it can be concluded that should any parts of the report be drafted by staff reporting to the expert, the expert should thoroughly review these parts. Any pitfalls in the language of the report, such as ambiguities, should be noted and amended.

Following the issuing of the report to the client, the client should be able to comment on the draft report, and the Commercial Forensic Practitioner should consider these comments in the context of the findings and understanding of the evidence.

2.3.24 Testifying phase

Rule 37 of the Supreme Court Act (No. 59 of 1959) provides for a pre-trial conference. Should there be an expert acting for the opposing party, the two experts may meet and discuss their respective findings. The pre-trial conference must be held no later than six weeks prior to the trial. The experts may during this conference consider one another’s findings, evidence and admissions made by each party and agree on common cause considerations.

Rule 37 states that minutes of this conference should be compiled and both parties should sign these minutes. The minutes should then be provided to the court no later than five weeks before the trial.

In High Court matters and following the pre-trial conference, the client may file a notice in terms of rule 36(2) no later than 15 days before the trial date, requiring the expert to testify at the trial, whereupon the expert may then be called to the court to testify.

CA-IFA (2006:17) states that in providing testimony, the expert must remain impartial and be transparent in their decision-making.

Some of the same information and findings that were included in any written report should be provided to the court verbally. This information includes the expert's role in the engagement, the nature of the engagement, the procedures performed, the scope of the work and the limitations, as well as any relevant findings, which are all based on the evidence analysed.

CA-IFA (2006:17) importantly emphasises the role of the expert, and that the expert should not assume the role of an advocate. The expert's curriculum vitae should be provided to the court, setting out experience, qualifications, education and career history accurately.

Glover (2013:410) further stated that an expert witness should state the facts or assumptions upon which his/her opinion is based and should not omit to consider material facts, which could detract from the concluded opinion.

Both the CA-IFA (2006:17) and the Creswell Code state that an expert witness "should make it clear when a particular question or issue falls outside his expertise".

Silverstone and Sheetz (2007:266-281) add to this significantly by stating that experts should adequately prepare their testimony, refresh their memory of the relevant information, remind themselves of the process they followed in concluding and even rehearse their testimony.

They also state that the expert's body language, demeanour, appearance and qualifications will all, if found favourable to the court, be of worth in adding to the expert's credibility in the eyes of the court.

If the expert fails to perform adequately, the expert risks losing credibility in the court and could even reduce the client's chances of obtaining a favourable outcome.

CHAPTER 3

3.1 RESEARCH METHODOLOGY

3.1.1 Introduction

This chapter describes different aspects of the research methodology, as well as aspects that must be considered before starting the research study. Section 3.2 describes the method of data collection (primary and secondary sources); section 3.3 deals with the population and sample of the study; section 3.4 discusses the reliability of the research paper, and finally, section 3.5 provides a summary of the chapter.

3.1.2 Research design

In this quantitative empirical study, a cross-sectional survey-based research design was used to obtain data on how the three constructs enhanced respondents' engagement, motivation and interactivity. The surveys were conducted over a period of four months (March to June 2014).

3.1.3 Research methods and data collection

In this empirical study, a Lime survey was used to collect primary data; the research is therefore quantitative in nature.

The researcher has to choose methods for collecting data. The data collected by the researcher can be from primary or secondary sources, and can be quantitative and/or qualitative, depending on the research viewpoint.

3.1.4 Primary data

This study includes data collected from the literature and questionnaires from Commercial Forensic Practitioner process users.

The information used in this research study is based on actual, current and relevant information.

3.1.5 Secondary data

Secondary data are data collected and used for other purposes than the specific study and documented in the form of reports, books, journals and the internet. In order to get an overview of the subject and ideas on how to carry out the study, the researcher started by using secondary sources such as books, articles and the internet. This helped to define the Commercial Forensic Practitioners Process and to gain a better understanding of the concept and other theories surrounding the Commercial Forensic Practitioners Process. The theoretical part of this study therefore included books and articles by many different authors.

3.1.6 Population and sample

Members belonging to the recently formed Institute of Commercial Forensic Practitioners in South Africa (ICFP) were targeted for the purposes of this study. The ICFP is a newly established institute aiming to regulate its members and the Commercial Forensic Practitioner fraternity in South Africa through training and a Code of Ethics. Its members come from various different backgrounds, including *inter alia* members of the South African Institute of Chartered Accountants, the Independent Regulatory Board for Auditors, attorneys, advocates, former law enforcement officers and IT specialists. The ICFP is a leading body that through membership offers a recognised professional qualification in commercial forensics.

The researcher focused on the South African members of the ICFP for the following reasons:

- This increased the significance of quality feedback;
- Because the study involved an anonymous survey, the researcher had to ensure that the population of the study were working in a financial environment or working with an organisation's finances; and
- The study could provide a base for future researchers in the field of the Commercial Forensic Practitioners Process.

The population for this study therefore comprised registered members of the ICFP. The population of ICFP members totalled 968, of whom 75 responded

to the online survey (8%) All of the 75 respondents were living in South Africa. The researcher had direct access to these members through the ICFP structures.

The information reported in this article was provided by a total of 75 respondents (members) who received an invitation to participate in the survey by e-mail during March 2014.

The non-probability purposive sampling method was used. With purposive sampling, as the name implies, respondents are chosen for a particular purpose (Neuman, 2007:142; Leedy & Ormond, 2010:212).

The membership of the ICFP, from various professional disciplines and experience, was chosen for the specific purpose of selecting an appropriate audience from among the South African Commercial Forensic Practitioner population.

3.1.7 Measuring instrument

The questionnaire items were designed by applying key concepts and criteria gleaned from the literature. Section A requested biographical information. A five-point Likert scale ranging from 1 (strongly disagree) to 5 (strongly agree) was used for Section B (process information). Questionnaires for Commercial Forensic Practitioners were developed to answer the purpose of the research; and to form the basis for the research findings and conclusions of the study. Content validity was established in that the Board of Directors of the ICFP examined and approved the questionnaire before its distribution to members. Minor modifications were implemented based on their recommendations, after which the study was pre-tested.

3.1.8 Data-collection procedure

The data were collected by means of self-administered Lime questionnaires that were provided to the Board of Directors of the ICFP and distributed by them to the ICFP members on behalf of the researcher.

3.1.9 Data analysis

The statistical analysis was conducted using SPSS 21 (SPSS Inc., 2012). Descriptive statistics were compiled including means and standard deviations. Due to the small sample ($n = 75$), non-parametric correlational techniques were used to analyse the data. Non-parametric correlations were used to investigate the relationships between the following three constructs:

- How important were the following reasons for implementing a formalised investigation process in your organisation (Factor 1);
- What effect has the implementation of a formalised investigation process in your organisation had on financial performance and/or productivity (Factor 2); and
- How important would you rate the following suggested sub-processes for inclusion in a formalised investigation process for Commercial Forensic Practitioners with reference to the requirements of your own organisation (Factor 3).

In relation to the distribution of the data, the Spearman rank-order correlation was used. The results can be considered significant if the p-values are smaller than 0.05 (Salkind, 2012).

3.1.10 Reliability of the research paper

The constructs are addressed individually in Tables 2, 3 and 4. Due to the small sample sizes ($n = 75$), non-parametric correlational analysis was performed.

3.1.11 Descriptive statistics

Table 2 represent item means and inter-item correlation, which are correlation coefficients and averages for items in the scale. The Cronbach's alpha coefficient indicates reliability, which can be seen as the consistency of a questionnaire.

The original questionnaire had three constructs, as discussed. All the alpha coefficients were higher than the guideline of $\alpha > 0.6$ (Gliem, 2003) It

therefore appears that, for this research, the measuring instruments have acceptable levels of internal consistency. Since these measures are reliable, the researchers are at liberty to use the findings.

Summary item statistics for Factor 1

	Mean	Minimum	Maximum	Range	Maximum / Minimum	Variance	N of items
Item means	3.844	3.145	4.629	1.484	1.472	.391	6
Inter-item correlations	.177	-.087	.716	.803	-8.235	.057	6

Table 1: Descriptive statistics for Factor 1

Summary item statistics for Factor 2

	Mean	Minimum	Maximum	Range	Maximum / Minimum	Variance	N of items
Item means	2.057	1.745	2.213	.468	1.268	.073	3
Inter-item correlations	.515	.471	.566	.094	1.200	.002	3

Table 2: Descriptive statistics for Factor 2

Summary item statistics for Factor 3

	Mean	Minimum	Maximum	Range	Maximum / Minimum	Variance	N of items
Item means	4.560	4.262	4.708	.446	1.105	.025	7
Inter-item correlations	.661	.358	.833	.475	2.324	.014	7

Table 3: Descriptive statistics for Factor 3

3.1.12 Correlations

Table 4 presents the positive correlations between the three constructs. Factor 1 (How important were the following reasons for implementing a formalised investigation process in your organisation) is significantly related to Factor 2 (What effect has the implementation of a formalised investigation process in your organisation had on financial performance and/or productivity) and Factor 3 (How important would you rate the following suggested sub-processes for inclusion in a formalised investigation process for Commercial Forensic Practitioners with reference to the requirements of your own organisation).

The latter implies, for example, that when the sub-processes as identified in Factor 3 are implemented, benefits associated with productivity and profitability are realised.

Correlations

			Factor1	Factor2	Factor3
Spearman's rho	Factor1	Correlation Coefficient	1.000	.225	.286*
		Sig. (2-tailed)		.087	.023
		N	64	59	63
	Factor2	Correlation Coefficient	.225	1.000	-.097
		Sig. (2-tailed)	.087		.469
		N	59	60	58
	Factor3	Correlation Coefficient	.286*	-.097	1.000
		Sig. (2-tailed)	.023	.469	
		N	63	58	69

*. Correlation is significant at the 0.05 level (2-tailed).

Table 4: Correlations between the three constructs

Reliability is expressed when the Cronbach's alpha coefficients are higher than 0.70. The Cronbach's alpha coefficients were $\alpha = 0.59$ for Factor 1

(Table 5), $\alpha = 0.75$ for Factor 2 which is thus considered reliable (Table 6) and $\alpha = 0.92$ for Factor 3 which is thus considered highly reliable (Table 7).

Reliability statistics

Cronbach's alpha	Cronbach's alpha based on standardised items	N of items
.597	.564	6

Table 5: Reliability statistics for Factor 1

Reliability statistics

Cronbach's alpha	Cronbach's alpha based on standardised items	N of items
.757	.761	3

Table 6: Reliability statistics for Factor 2

Reliability Statistics

Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
.920	.932	7

Table 7: Reliability statistics for Factor 3

3.2 FREQUENCY ANALYSIS OF DATA GATHERED

3.2.1 Introduction

The discussion of the frequency analysis of the data is concerned with the analysis and interpretation of the data obtained from the sources mentioned in the research methodology for this study. The objective of this section is to discuss the empirical results of the research.

3.2.2 Questionnaire analysis

This section deals with the analysis of the questionnaire distributed to the South African members of the ICFP. Respondents were requested to complete demographic information, including:

- Gender;
- Age;
- Geographic area where they are practising/ have practised during their career; and
- Field of expertise, and time period within this field.

They were then requested to complete a section detailing:

- Utilisation of a formalised investigation process;
- Period during which this process has been in existence; and
- Monitoring compliance with regard to the requirements of such a process.

The benefits of making use of a process were measured by requesting information pertaining to the effect that the process had on financial performance and/or productivity.

Finally, the sub-processes, as identified in the literature review, were posed to the respondents, and their importance was measured based on a Likert scale.

3.2.3 Demographic analysis

Typical biographic information, such as the gender and age of respondents, was obtained to characterise and profile the members of the ICFP, and these results are discussed next.

3.2.4 Gender

Figure 2 indicates the gender of respondents who participated in the survey.

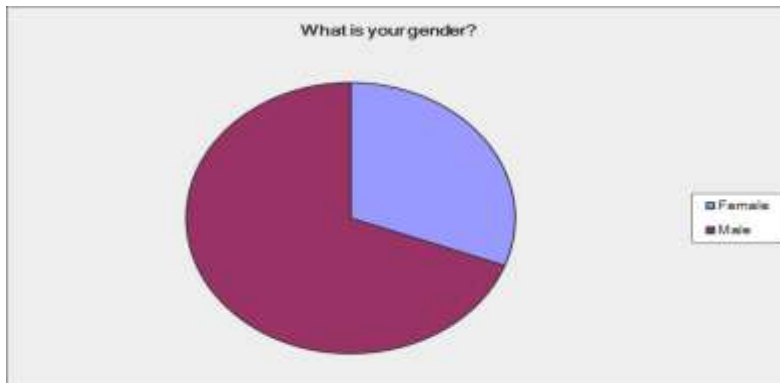


Figure 2: Gender of respondents who participated in the survey

What is your gender?		
Answer options	Response Percentage	Response Count
Female	30.7%	23
Male	69.3%	52
<i>answered question</i>		75
<i>skipped question</i>		0

Most of the respondents (69.3%) were male, and only 30.7% were female. There were significantly more males than females in the sample distribution.

3.2.5 Age

The age of respondents is depicted in Figure 3.

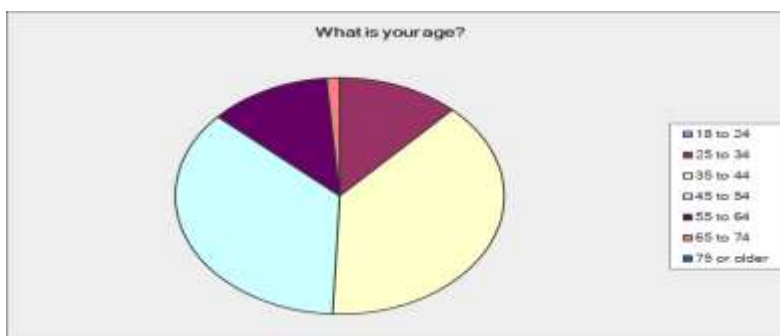


Figure 3: Age of respondents who participated in the survey

What is your age?		
Answer options	Response Percent	Response Count
18 to 24	0.0%	0
25 to 34	12.0%	9
35 to 44	38.7%	29
45 to 54	36.0%	27
55 to 64	12.0%	9
65 to 74	1.3%	1
75 or older	0.0%	0
<i>answered question</i>		75
<i>skipped question</i>		0

Respondents were mostly between the ages of 35 and 44 years (38.7%), followed by 36% who were between the ages of 45 and 54 years. No respondents were identified between the ages of 18 and 24 years, and only 12% of the respondents were between the ages of 25 and 34 years. A very small percentage of the respondents (1.3%) were aged 65 to 74 years and no respondents older than 75 years were recorded. The majority of Commercial Forensic Practitioners fall within the two age categories of 35 to 44 and 45 to 54 years. These age categories represent the productive stage of a working career in the human life-cycle.

3.2.6 Geographical area in which respondents are practising

Figure 4 depicts the geographical area in which respondents were practising and where they had previously practised.

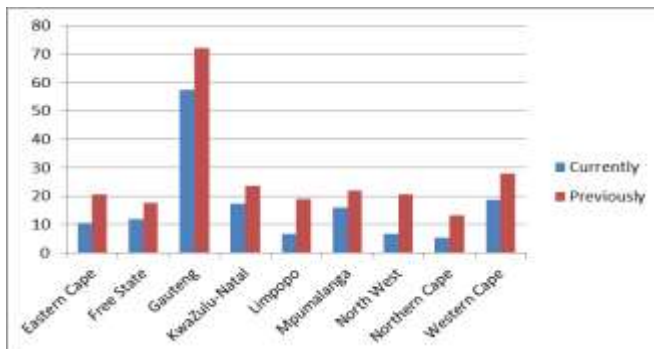


Figure 4: Geographical area in which respondents were practising and had previously practised

In which province(s) do you currently practise as a Commercial Forensic Practitioner? (You may choose more than one.)			In which province(s) have you previously practised as a Commercial Forensic Practitioner? (You may choose more than one.)		
Answer options	Response Percentage	Response Count	Answer options	Response Percentage	Response Count
Eastern Cape	10.7%	8	Eastern Cape	20.6%	14
Free State	12.0%	9	Free State	17.6%	12
Gauteng	57.3%	43	Gauteng	72.1%	49
KwaZulu-Natal	17.3%	13	KwaZulu-Natal	23.5%	16
Limpopo	6.7%	5	Limpopo	19.1%	13
Mpumalanga	16.0%	12	Mpumalanga	22.1%	15
North West	6.7%	5	North West	20.6%	14
Northern Cape	5.3%	4	Northern Cape	13.2%	9
Western Cape	18.7%	14	Western Cape	27.9%	19
Other (please specify)		4	Other (please specify)		6
<i>answered question</i>		75	<i>answered question</i>		68
<i>skipped question</i>		0	<i>skipped question</i>		7

The majority of Commercial Forensic Practitioners were currently practising in Gauteng (57.3%), followed by the Western Cape (18.7%). The concentration of Commercial Forensic Practitioners is mainly due to Gauteng province being the economic hub of South Africa, followed by the Western Cape. However, a notable decline in the numbers of respondents practising in Gauteng and the Western Cape was observed, since 72.06% of the respondents indicated that they had previously practised in Gauteng (compared to 57.3% currently practising there) and 27.9% in the Western Cape (compared to 18.7% currently).

3.2.7 Field of expertise

According to Du Plessis (2001:4, 6), the service rendered by a Commercial Forensic Practitioner is an area of specialisation in a multidisciplinary profession comprising professionals from various fields, including accountants, auditors, lawyers, information technologists and fraud risk professionals. The respondents' fields of expertise are shown in Figure 5.

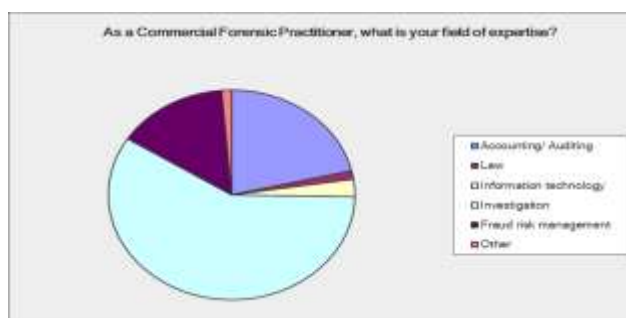


Figure 5: Respondents' fields of expertise

As a Commercial Forensic Practitioner, what is your field of expertise?		
Answer options	Response Percentage	Response Count
Accounting/ Auditing	21.3%	16
Law	1.3%	1
Information technology	2.7%	2
Investigation	58.7%	44
Fraud risk management	14.7%	11
Other	1.3%	1
<i>answered question</i>		75
<i>skipped question</i>		0

The field of expertise of the majority of respondents was investigation (58.7%), followed by accountants and auditors (21.3%).

3.2.8 Registration with other professional bodies

The majority of members were also members of the ACFE (75.9%), followed by SAICA (19%) (Figure 6). The majority of participants were therefore not members of the accounting and legal professions, but rather within the investigation profession.

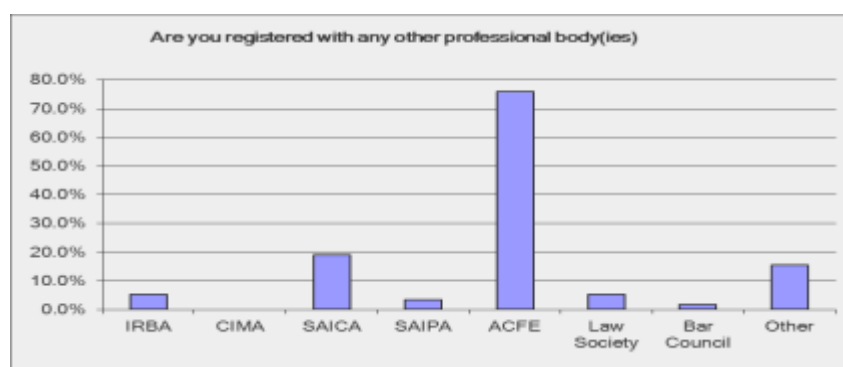


Figure 6: Registration with other professional bodies

Are you registered with any other professional body(ies)		
Answer options	Response Percentage	Response Count
IRBA	5.2%	3
CIMA	0.0%	0
SAICA	19.0%	11
SAIPA	3.4%	2
ACFE	75.9%	44
Law Society	5.2%	3
Bar Council	1.7%	1
Other	15.5%	9
Other (please specify)		23
<i>answered question</i>		58
<i>skipped question</i>		17

3.2.9 Level of experience gained

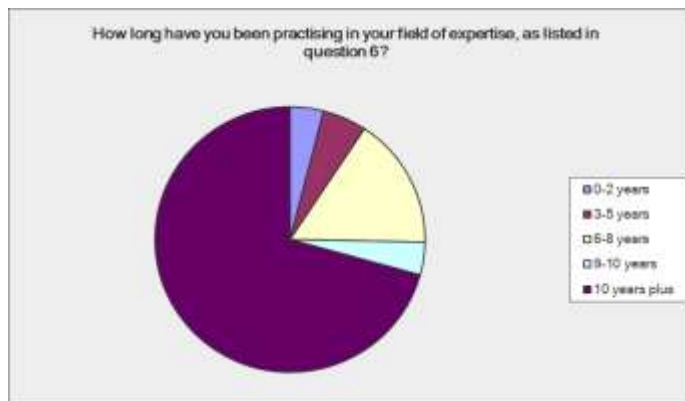


Figure 7: Respondents' number of years' experience

How long have you been practising in your field of expertise?		
Answer options	Response Percentage	Response Count
0-2 years	4.0%	3
3-5 years	5.3%	4
6-8 years	16.0%	12
9-10 years	4.0%	3
10 years plus	70.7%	53
<i>answered question</i>		75
<i>skipped question</i>		0

The majority of respondents were highly experienced with over ten years' experience (70.7%), followed by practitioners with between six and ten years' experience (20.0%). Fewer than 10% of respondents had less than five years' experience (Figure 7).

3.2.10 Reasons for not making use of a formalised investigation process

The respondents who indicated that they did not use a formalised investigation process totalled 22.7%. The majority of respondents (77.3%) thus make use of a formalised investigation process (Figure 8). Most of the respondents who did not make use of a formalised investigation process indicated that they:

- Have a policy in place governing managerial aspects within their methodology, but that they do not use a formalised investigation process (41.2%);
- Do not have a formalised investigation process at their disposal (35.3%);
- Are not aware of a formalised investigation process being utilised in industry that we could be used (23.5%); or
- Found that the implementation of a formalised investigation process proved too difficult (23.5%).

Respondents were also requested to provide other reasons for not making use of a formalised investigation process, and the following responses were recorded:

- Certified Fraud Examiners are predominantly used as the standard in the organisation;
- A formalised process does not allow for proactive results sought in the field; and
- A formalised process is beneficial to junior staff, but experienced staff all apply their own ‘touch’ as the investigation leads them. They do, however, report on and cover all bases so that nothing is missed.

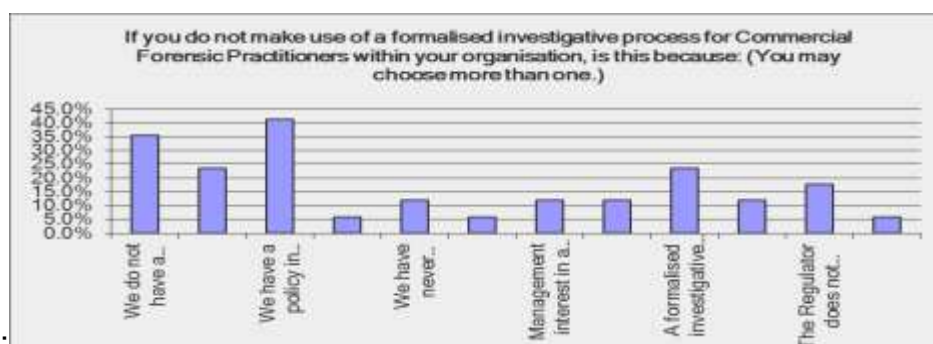


Figure 8: Reasons for not making use of a formalised investigation process

If you do not make use of a formalised investigation process for Commercial Forensic Practitioners within your organisation, is this because: (You may choose more than one)		
Answer options	Response Percentage	Response Count
We do not have a formalised investigation process at our disposal.	35.3%	6
We are not aware of a formalised investigation process being utilised in industry that we could use.	23.5%	4
We have a policy in place governing managerial aspects within our methodology, but no formalised investigation process.	41.2%	7
We evaluated formalised investigation processes, but decided not to implement any specific framework.	5.9%	1
We have never considered using a formalised investigation process.	11.8%	2
The implementation of a formalised investigation process failed to deliver the expected results.	5.9%	1
Management interest in a formalised investigation process has faded.	11.8%	2
Management could not reach agreement on the composition of a formalised investigation process.	11.8%	2
A formalised investigation process proved too difficult to implement.	23.5%	4
The Regulator does not require a specific framework to be utilised.	11.8%	2
The Regulator does not prescribe a framework.	17.6%	3
Being a member of a regulatory body is not a prerequisite for conducting commercial forensic investigative work.	5.9%	1
Other (please specify)		3
<i>answered question</i>		17
<i>skipped question</i>		58

3.2.11 Reasons for implementing a formalised investigation process

Respondents scored the following reasons as the most important (strongly agree) for implementing a formalised investigation process (Figure 9):

- To address reputational risks associated with forensic investigations (4.61); and
- To ensure quality control of investigative work (4.59).

Respondents agreed that the Commercial Forensic Practitioner industry does not require practitioners to follow any procedures (3.39).

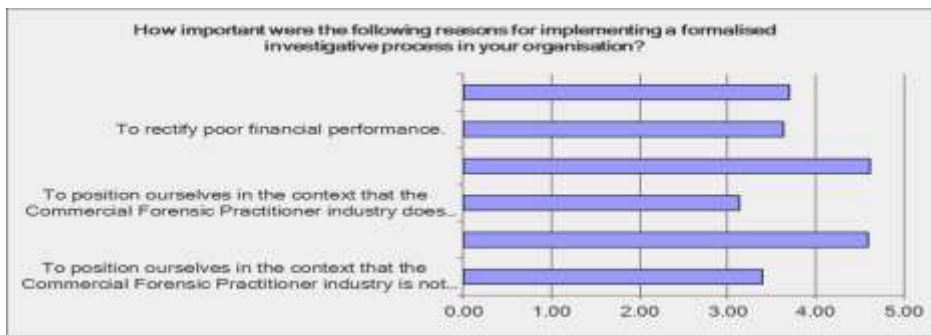


Figure 9: Reasons for implementing a formalised investigation process

How important were the following reasons for implementing a formalised investigation process in your organisation?							
Answer options	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Rating Average	Response Count
To position ourselves in the context that the Commercial Forensic Practitioner industry is not legally regulated.	5	7	18	26	8	3.39	64
To ensure quality control of investigative work.	0	1	0	23	40	4.59	64
To position ourselves in the context that the Commercial Forensic Practitioner industry does not require us to follow any procedures.	11	9	14	21	9	3.13	64
To address reputational risks associated with forensic investigations.	0	0	2	21	41	4.61	64
To rectify poor	5	9	9	21	19	3.63	63

How important were the following reasons for implementing a formalised investigation process in your organisation?							
Answer options	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Rating Average	Response Count
financial performance.							
To contend with increasing competition.	3	10	7	26	17	3.70	63
Other (please specify)							2
<i>answered question</i>							64

3.2.12 Time period in which organisations have implemented the investigation process for Commercial Forensic Practitioners

The Commercial Forensic Practitioners Process was criticised in 2002 for not following due process, and much of the literature regarding process has been published since 1996. It is interesting to note that South African practices only showed a real interest into the Commercial Forensic Practitioners Process during the years 2001 to 2004, as this was the period in which most South African practices implemented the process. Figure 10 depicts the time period during which respondents implemented a formalised investigation process:

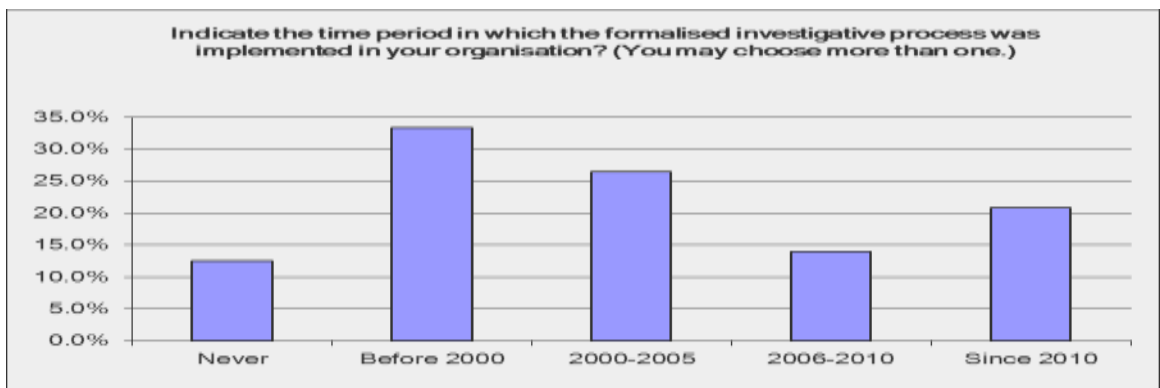


Figure 10: Time period during which respondents implemented a formalised investigation process

Indicate the time period in which the formalised investigation process was implemented in your organisation? (You may choose more than one.)		
Answer options	Response Percentage	Response Count
Never	12.5%	9
Before 2000	33.3%	24
2000-2005	26.4%	19
2006-2010	13.9%	10
Since 2010	20.8%	15
<i>answered question</i>		72
<i>skipped question</i>		3

The majority of respondents had implemented a formalised investigation process since 2000. Some 12.5% of respondents had never implemented such a process and did not make use of a formalised process (Figure 10).

3.2.13 Monitoring and management review of compliance with provisions of the formalised investigation process of the practice

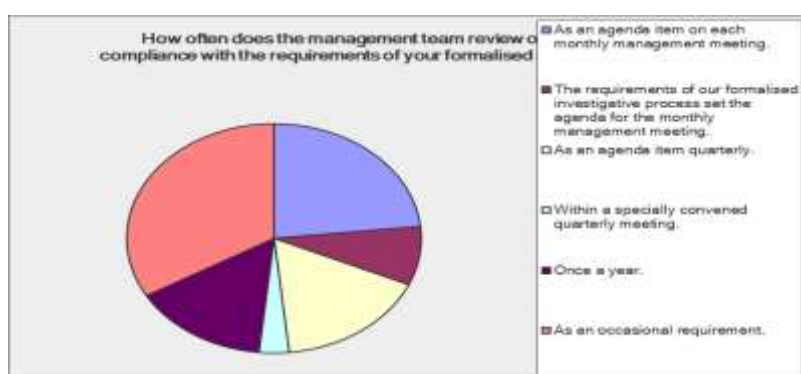


Figure 11: Frequency of monitoring and management review of compliance with the provisions of the formalised investigation process of the practice

How often does the management team review or formally assess compliance with the requirements of your formalised investigation process?		
Answer options	Response Percentage	Response Count
As an agenda item on each monthly management meeting.	23.3%	14
The requirements of our formalised investigation process set the agenda for the monthly management meeting.	8.3%	5
As an agenda item quarterly.	16.7%	10
Within a specially convened quarterly meeting.	3.3%	2
Once a year.	15.0%	9
As an occasional requirement.	33.3%	20
Other (please specify)		14
<i>answered question</i>		60
<i>skipped question</i>		15

3.2 Integration of the formalised investigation and budgeting processes

The purpose of this part of the questionnaire was to establish a relationship between the integration of the Commercial Forensic Practitioners Process into the budgeting process and improved financial performance.

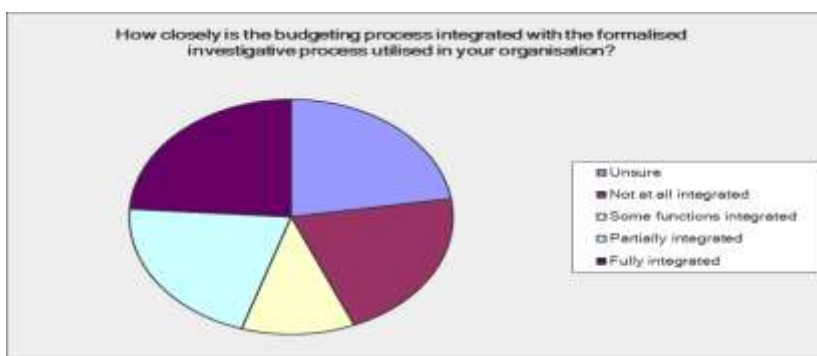


Figure 12: Integration of the formalised investigation and budgeting processes

How closely is the budgeting process integrated with the formalised investigation process utilised in your organisation?		
Answer options	Response Percentage	Response Count
Unsure	22.5%	16
Not at all integrated	21.1%	15
Some functions integrated	11.3%	8
Partially integrated	21.1%	15
Fully integrated	23.9%	17
<i>answered question</i>		71
<i>skipped question</i>		4

A total of 56.3% of respondents indicated that their formalised investigation and budgeting processes were integrated. However, 43.6% of respondents indicated that these processes were not integrated or that they were unsure (Figure 12).

3.3 Effect of Commercial Forensic Practitioners Process on financial performance and/or productivity

The majority of respondents indicated that the benefits associated with the implementation of a formalised investigation process integrated with the budget are significant (Figure 13). The following notable findings are of significance:

- 88.1% of respondents were of the view that there was an improvement in financial performance and/or productivity after the implementation of the formalised investigation process, while 11.9% felt that that improvement was realised only to an extremely small or small extent.

- 33.9% of respondents felt that there was no improvement in financial performance and/or productivity since the implementation of the formalised investigation process; however, 62% of respondents were of the view that there was a significant improvement in financial performance and productivity.
- 76.9% of respondents identified deterioration in financial performance and/or productivity after the implementation of the formalised investigation process to a small or extremely small extent, while 20.3% realised a deterioration in financial performance and/or productivity to a moderate or extremely large extent.
- 60% of respondents indicate that to an extremely small to small extent, the effect had not yet been determined, while 37.2% indicated that the effect had not been determined to a large or extremely large extent.
- The following other comments of the effect of the implementation of the formalised investigation process on the financial performance and/or productivity of the organisation were noted:
 - A formalised investigative framework would be dependent on the investigative industry in which the practice operates, as well as the type of investigations. Different investigative approaches or methodology are utilised for different investigation queries.
 - Such a process forms an integral part with respect to consistency within the organisation's investigations, as the results are often related to disciplinary action where consistency is also monitored.
 - The practice is often requested to demonstrate during tender bids that it has a formalised investigation process or methodology. The methodology is attached to the bid document as an annexure.
 - The impact on financial performance not relevant since they do not charge for the work they perform.

This finding is of significant importance as it proves that the Commercial Forensic Practitioners Process can have a positive effect on the financial performance of a practice.

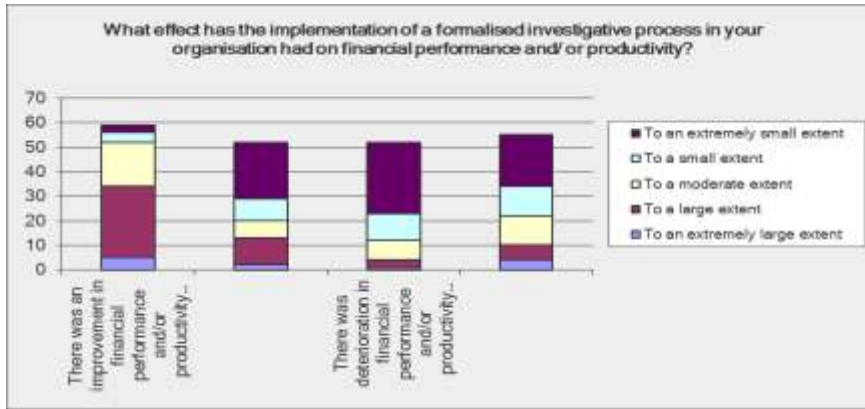


Figure 13: Effect of Commercial Forensic Practitioners Process on financial performance and/or productivity

What effect has the implementation of a formalised investigation process in your organisation had on financial performance and/or productivity?							
Answer options	To an extremely small extent	To a small extent	To a moderate extent	To a large extent	To an extremely large extent	Response Count	
There was an improvement in financial performance and/or productivity after the implementation of the formalised investigation process.	3	4	18	29	5	59	
There was no improvement in financial performance and/or productivity since the implementation of the formalised investigation process.	23	9	7	11	2	52	
There was deterioration in financial performance and/or productivity after the implementation of the formalised investigation process.	29	11	8	3	1	52	
The effect has not yet been determined.	21	12	12	6	4	55	
Other comments of the effect of the implementation of the formalised investigation process on the financial performance and/ or productivity of the organisation?						6	
						<i>answered question</i>	66
						<i>skipped question</i>	9

3.4 Importance of suggested sub-processes within a formalised investigation process

The suggested sub-processes, as described, are accepted by the respondents to the following extent (Figure 14):

- 91% of respondents regarded client acceptance and service considerations; risk management procedures, independence and engagement agreements, as important, whereas 9% regarded these procedures as not very important;
- 99% of respondents regarded planning and strategic objectives of an engagement, including documented investigative plan incorporating the relevant disciplines (accounting, law, IT, investigative and risk management skills), as important, whereas 1% regarded these procedures as not very important;
- 97% of respondents regarded gathering information and evidence, documenting evidence in an evidence file or system and safeguarding evidence as important, whereas 3% regarded these procedures as not very important;
- 99% of respondents regarded interviewing, using best practice interviewing skills, by planning the interview to achieve strategic objectives, recording the interview and using technology such as voice stress analysis techniques as important, whereas 1% regarded these procedures as not very important;
- 98% of respondents regarded analysis and verification of evidence as important, whereas 2% regarded these procedures as not very important;
- 99% of respondents regarded quality management as important, with all reported findings included in referenced working papers supported by documented physical evidence, whereas 1% regarded these procedures as not very important; and
- 99% of respondents regarded it as important to report on findings in a detailed forensic report: clearly and concisely reflecting on the sequence of events, supported by financial information and documents, and having the findings in a format that could be used in disciplinary enquiries and/or

proceedings in civil and criminal courts, whereas 1% regarded these procedures as not very important.

Respondents were invited, according to their understanding, to highlight which of the processes listed (if any) were required by statute and/or other regulatory requirements and to list the applicable process and relevant legislation and any other relevant regulatory requirements. The following responses were highlighted:

- None, Not sure and Not applicable;
- Interviewing processes and evidence submission to courts;
- Access to information: Protection of Personal Information Act (POPI) (No. 4 of 2013) and Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA) (No. 70 of 2002);
- We operated in over 17 African regulatory and legislative environments so not possible to list every compliance requirement save to say that the relevant criminal procedure act, rules of evidence, money-laundering report framework for the country concerned and bribery/corruption reporting framework are key.
- From an internal audit perspective, most of these form part of the International Audit Standards, to put reliance on the findings of the review. I use my experience and qualifications in internal audit to perform my work as forensic analyst.
- Interviewing, using best practice interviewing skills, by planning the interview to achieve strategic objectives, recording the interview and using technology such as voice stress analysis techniques;
- Reporting on findings in a detailed forensic report: clearly and concisely reflecting on the sequence of events, supported by financial information and documents. Findings in a format that could be used in disciplinary enquiries and/or proceedings in the civil and criminal courts;
- Gathering of evidence and documentation in terms of the Criminal Procedure Act (CPA) (No. 51 of 1977) and Common Law of Evidence. Interviewing and statement taking also the CPA and Common Law of

Evidence. The analysing of evidence and the presentation of findings in a criminal, civil or disciplinary hearing is regulated by the CPA, Law of Evidence, Labour Relations Act (No. 66 of 1995) and the Basic Conditions of Employment Act (No. 75 of 1997).

- Client acceptance, planning of the engagement, information gathering, analysis, quality management, reporting and interviewing, which will also include external confirmations;
- The Independent Regulatory Board for Auditors (IRBA) suggests that proof or working be reduced to writing;
- Gathering and handling of evidence: Criminal Procedure Act.
- Risk management and independence: Ethical principles of the professional bodies. Gathering of evidence/recording: Constitutional rights of individuals and interception and monitoring of third-party communications;
- Criminal investigation process powers to obtain evidence;
- Gathering information and evidence, documenting evidence in an evidence file or system and safeguarding evidence: Criminal Procedure Act, Generally accepted accounting principles (GAAP);
- Risk management and evidence collection with all the various related actions in this regard;
- Guidelines of the Association of Certified Fraud Examiners (ACFE), internal methodology;
- 1. Client acceptance: South African Institute of Chartered Accountants (SAICA)/ Independent Regulatory Board for Auditors (IRBA) code; (2). Gathering information: Law of Evidence (Amendment) Act, Digital Evidence Act,¹ (3). Interviewing: Protected Disclosures Act (Whistle-blower Act (No. 26 of 2000); (4). Reporting: the Constitution including the Bill of Rights; and
- Not aware of any statutory requirements.

¹ South Africa does not have a Digital Evidence Act. Electronically emanated evidence may be admitted in evidence in a criminal court under the Common Law, Criminal Procedure Act (No. 51 of 1977), Section 3(1) of the Law of Evidence Amendment Act (No. 45 of 1988) (hearsay) and Electronic Communications and Transactions Act (No. 25 of 2002) (Krige, 2012).

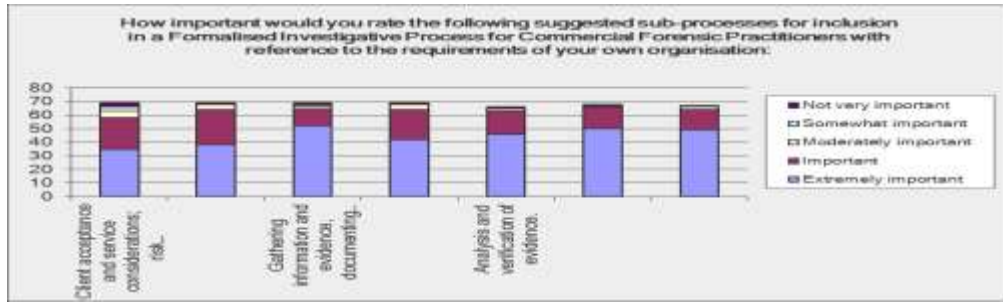


Figure 14: Effect of Commercial Forensic Practitioners Process on financial performance and/or productivity

How important would you rate the following suggested sub-processes for inclusion in a formalised investigation process for Commercial Forensic Practitioners with reference to the requirements of your own organisation:						
Answer options	Not very important	Somewhat important	Moderately important	Important	Extremely important	Response Count
Client acceptance and service considerations; risk management procedures, independence and engagement agreements.	3	3	5	23	35	69
Planning and strategic objectives of an engagement, including documented investigative plan incorporating the relevant disciplines (accounting, law, IT, investigative and risk management skills).	1	0	4	26	38	69
Gathering information and evidence, documenting evidence in an evidence file or system and safeguarding evidence.	1	1	2	13	52	69
Interviewing, using best practice interviewing skills, by planning the interview to achieve strategic objectives, recording the interview and using technology such as voice stress analysis techniques.	1	0	4	22	42	69
Analysis and verification of evidence.	1	0	2	17	46	66
Quality management, with all reported findings included in referenced working papers	1	0	1	16	50	68

How important would you rate the following suggested sub-processes for inclusion in a formalised investigation process for Commercial Forensic Practitioners with reference to the requirements of your own organisation:						
Answer options	Not very important	Somewhat important	Moderately important	Important	Extremely important	Response Count
supported by documented physical evidence.						
Reporting on findings in a detailed forensic report: clearly and concisely reflecting on the sequence of events, supported by financial information and documents. Findings in a format that could be used in disciplinary enquiries and/or proceedings in the civil and criminal courts.	1	0	2	15	49	67
<i>answered question</i>						69
<i>skipped question</i>						6

3.5 Service considerations as opposed to knowledge, skills and experience

A total of 93% of respondents regard the consideration to engage only in those services for which they have the necessary knowledge, skills and expertise as important; 4% of respondents regarded this consideration as somewhat important and 3% as not very important.

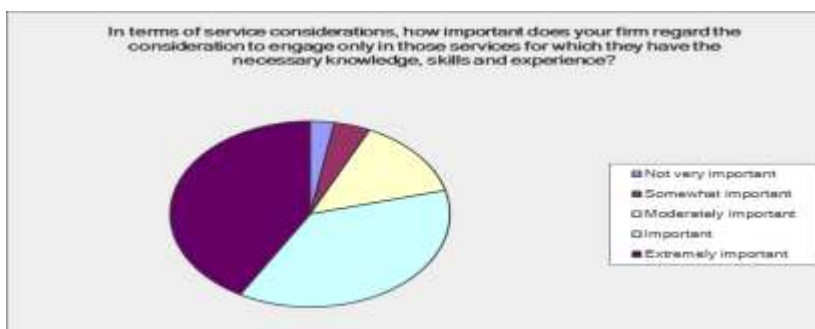


Figure 15: Importance of service considerations as opposed to knowledge, skills and experience

In terms of service considerations, how important does your firm regard the consideration to engage only in those services for which they have the necessary knowledge, skills and experience?		
Answer options	Response Percentage	Response Count
Not very important	2.8%	2
Somewhat important	4.2%	3
Moderately important	13.9%	10
Important	37.5%	27
Extremely important	41.7%	30
<i>answered question</i>		72
<i>skipped question</i>		3

3.6 Suggestions in relation to developing a formalised investigation process for Commercial Forensic Practitioners or a framework of important aspects to be considered

The following suggestions were made by respondents to the survey:

- It must be reviewed regularly to ensure compliance with the law and constitution of the country;

- I think that we should compile a training file before it should be considered to develop any investigation processes. Too many practitioners claim knowledge to get a foot in the industry with little or no knowledge or skills;
- Creative investigative approaches/methodologies that will enhance any investigation. A different approach, depending on the dimension of the investigation;
- No. I feel that the Bank has this aspect well covered and certainly is not in need of external regulation in an already class-leading internally regulated system;
- Framework will be beneficial for newcomers as well as cross-skilling and lastly having a reference glossary;
- A basic manual be made available to all members for a framework to be used in all files;
- It will be critical to include a category on digital forensics as this is inter-related to all forensic investigations. I further suggest a portion dealing with the HR component as well as industrial relations. Finally under reporting there should be a feedback loop of the learning stemming from the investigation into internal audit or whoever is dealing with the remediation of the controls;
- The legislator should draft legislation which regulates the industry and provide for specific requirements for registering practitioners who are not employed by government investigating authorities, policing and law enforcement agencies;
- Total accountability, without any limitations;
- A distinction needs to be drawn between those firms with an in-house investigative capacity and those who undertake assignments for external clients;
- Please ensure your mandate as a forensic department is approved by the Board, Audit Committee and your Executive Committee;
- There is need to consider the different environments (i.e. workplace investigations done by internal investigators versus investigations conducted by consultants at forensic/accounting/law firms. The

investigation processes should be guided by the environment under which the Commercial Forensic Practitioner is working;

- It should be based on best practice and reference should be made that investigation was conducted within the standards of the ICFP and ACFE. It will give the client the reassurance that the quality is on par with international standards;
- A very good initiative. To guard against losing cases in court on technicalities, maybe special attention should be directed at compliance with technical and legal requirements during investigations; and
- Develop a proper framework.

3.7 Summary

The research methodology of the study was explained, including the method of data collection (namely, the primary and secondary data sources, the population and sample of the study and the reliability of the measurement tools used).

The questionnaire distributed to the South African members of the ICFP was then analysed and interpreted. The following topics were investigated:

- The time period of implementation: it was found that the major implementation of the Commercial Forensic Practitioners Process took place during the years 2001 to 2004.
- The effect of the implementation of the Commercial Forensic Practitioners Process on the financial performance of a practice: it was found that 70% of practices that implemented the Commercial Forensic Practitioners Process have experienced an improvement in their financial performance, and 63% of practices that implemented the Commercial Forensic Practitioners Process during the years 2001 to 2004 have experienced improved financial performance.
- The integration of the Commercial Forensic Practitioners Process into a practice budgeting process: it was established that a relationship exists between the integration of the Commercial Forensic Practitioners Process into the budgeting process and improved financial performance of the

business, as 60% of the 70% of practices that experienced improved financial performance had the Commercial Forensic Practitioners Process fully integrated into their budgeting process.

CHAPTER 4

SUMMARY, CONCLUSION AND RECOMMENDATIONS

4 Introduction

The objective of this study was to determine a generic investigation process for Commercial Forensic Practitioners in South Africa.

Conclusions and recommendations will be drawn in this final chapter of the research based on the study objectives and findings. A summary of the study is given in the following section.

4.1 Summary

The research dealt with a generic investigation process for Commercial Forensic Practitioners. It also dealt with its implementation and investigative performance in South African practice. In this study, an overview of the investigation process for Commercial Forensic Practitioners in South Africa was discussed.

The research also analysed the following:

- The time period in which organisations implemented the Commercial Forensic Practitioners Process;
- The effect of the Commercial Forensic Practitioners Process on investigative performance, and
- The integration of the Commercial Forensic Practitioner's process into the budgeting process.

4.2 Conclusion

The findings of the study revealed the following:

- Each of the phases of the Commercial Forensic Practitioners Process is as important as the others in matters that will be presented before court.
- With the focus on providing clarity to the court in terms of evidence relating to the matter, and with evidence only being admissible if it is relevant, and with the relevance of evidence depending on its significance to the case of

each party, it is clear that each of the phases discussed of the process are imperative in performing a forensic accounting investigation properly.

- An investigation should only be performed if it can be performed properly and in a manner that provides clarity and value to the engagement and its objectives. For this purpose, a Commercial Forensic Practitioner should only accept an assignment if free of conflicts and any independence issues. This will be one of the considerations of the court in assessing the Commercial Forensic Practitioner's expertise and credibility. If a court finds a Commercial Forensic Practitioner to be conflicted or not independent, this will pose a serious risk to the Commercial Forensic Practitioners' credibility, legal action and claims. It is imperative for Commercial Forensic Practitioners to adequately assess not only their relationship to the client and the particular engagement, but also their relationship to any opposing party. This assessment should be done in the context of all other work of the practice, not only that work that is performed by the particular Commercial Forensic Practitioner and direct colleagues.
- Potential issues should be clearly communicated to the client and written consent be obtained if the Commercial Forensic Practitioner still performs the assignment. It is therefore also important to know which issues preclude the Commercial Forensic Practitioner from acting, and which pose a risk that can be mitigated.
- The various other administrative processes should also be dealt with, namely signing an engagement letter, and agreeing deadlines, fee structures, communication between parties and other clients, and Commercial Forensic Practitioner requirements. It is important for Commercial Forensic Practitioners to document their own expectations of the client, the client's legal team and staff, if any, and have the client agree to these expectations. Without the assistance of the all of these parties, the investigation will be significantly frustrated and the Commercial

Forensic Practitioner is not be able to meet deadlines and timelines set or obtain the information required to reach conclusions.

- Thus, the Commercial Forensic Practitioner must design, implement and use a robust client and engagement acceptance process that is documented, standardised and, where relevant, agreed with the client.
- During the investigation phase, the Commercial Forensic Practitioner will apply skills in obtaining, extracting, analysing and considering all information relevant to the scope of the work. A very important aspect of this phase is gathering the evidence in an admissible manner. Such information should also be correctly interpreted so as to form an independent view or conclusion based on the evidence.
- In order to do so, the Commercial Forensic Practitioner should plan and record the plan, updating it as needed on an ongoing basis. The intention of the plan is to be able to provide clarity to the court, while mitigating and considering possible counter-arguments.
- The execution of the plan must be in a manner that facilitates an efficient evidence-gathering process, which includes an adequate chain of evidence and investigation diary. A record of all procedures performed should also be maintained.
- The information-gathering activities in the investigation phase will almost always include interviews with witnesses and other relevant individuals who can provide information pertinent to drawing a conclusion. This may include obtaining statements from witnesses, where appropriate. During this process, it is important for the commercial forensic practitioner to also be aware of the legal and statutory requirements in doing so; for example, the Commercial Forensic Practitioner is obliged to inform individuals suspected of committing a criminal offence of their rights in terms of the Constitution.

- It is vital to understand the laws and principles of evidence and rules of the court when collating and interpreting evidence.
- Another important principle for the expert to apply in the investigation is to be able to interpret all the facts, data and information relating to the investigation within the context of reasonable, expected, legislated, agreed and/or required behaviour. In this way, the expert is able to highlight and report on exceptions that do not comply with the various possible requirements. Understanding the benchmark behaviour required of the client or opposing party and interpreting and comparing the actual behaviour to the benchmark are key in providing the court with the expert evidence and opinion needed to resolve the matter brought before the legal forum.
- The role of a Commercial Forensic Practitioner in an investigation process is, therefore, to gather evidence, interrogate and examine the financial evidence, develop computer applications that help in analysing and presenting the evidence, putting forward all the findings in the form of reports, exhibits and documents, and finally taking part in civil actions or litigation as an expert witness, and testifying to the court and presenting all the evidence obtained through documentation or visual aids. It is therefore of the essence that a Commercial Forensic Practitioner be well versed in financial issues and legal concepts and proceedings.
- The study found that the majority of respondents (69.3%) were male, while only 30.7% were female. Respondents were mostly aged between 35 and 44 years old (38.7%), followed by 36% who were between the ages of 45 and 54 years. A small number of respondents were between the ages of 18 and 24 years, and only 12% of the respondents were between the ages 25 and 34 years. This is indicative that the profession needs to ensure that younger people identify the profession as a career and actively participate in educating and promoting the profession. The majority of Commercial Forensic Practitioners fall within two age categories, namely, 35 to 44 and

45 to 54 years. These age categories fall into the productive stage of a working career in the human life-cycle. It is furthermore inferred that the level of experience is of importance, as the majority of participants were well experienced, mostly with at least ten years' experience.

- A total of 22.7% of respondents indicated that they do not use a formalised investigation process. The majority of respondents (77.3%) thus make use of a formalised investigation process.
- The study found that formalised investigation processes are not implemented for the following reasons:
 - Managerial and governance processes within practices were sufficient to address the risks posed (41.2%);
 - Commercial Forensic Practitioners do not have a formalised investigation process at their disposal (35.3%);
 - Commercial Forensic Practitioners are not aware of a formalised investigation process being utilised in industry that could be used (23.5%); and
 - The implementation of a formalised investigation process proved too difficult (23.5%).
- Other reasons for not making use of a formalised investigation process included:
 - The ACFE standards are utilised;
 - A formalised process does not allow for proactive results sought in the field; and
 - A formalised process is beneficial to junior staff but the experienced hands all apply their own 'touch' as the investigation leads them. They do, however, report on and cover all bases so that nothing is missed.

- The majority of respondents had implemented a formalised investigation process since 2000. Some 12.5% of respondents had never implemented such a process and did not make use of one.
- The most important reasons for implementing a formalised investigation process included reputational risks and quality control of investigative work. It was notable that the study revealed that the industry does not require practitioners to follow any procedures.
- It is noteworthy that practitioners did not regard monitoring and management review of compliance with the provisions of their formalised investigation process as an important requirement. The study revealed that the majority of Commercial Forensic Practitioners would measure compliance as an occasional requirement (33.3%); only 23.3% placed compliance as an agenda item for each monthly management meeting and 16.7% as a quarterly agenda item.
- The majority (56.3%) of practitioners recognised that integration of a formalised process with the budgeting process could enhance productivity and financial benefits. Of the respondents, 23.9% indicated that they had integrated their processes, but 43.6% indicated that these processes were not integrated and/or that they were unsure. The majority of respondents indicated that the benefits associated with the implementation of a formalised investigation process integrated with the budget are significant.
- The following notable findings are of significance:
 - The majority of respondents (88.1%) were of the view that there was an improvement in financial performance and/or productivity after the implementation of the formalised investigation process.
 - 33.9% of respondents felt that there had been no improvement in financial performance and/or productivity since the implementation of the formalised investigation process;

- 62% of respondents were of the view that there was a significant improvement in financial performance and productivity since the implementation of the formalised investigation process.
- The following other comments with respect to the effect of the implementation of the formalised investigation process on the financial performance and/or productivity of the organisation were recorded:
 - A formalised investigative framework is industry specific and dependent on the type of investigation.
 - Different investigative approaches and methodologies are utilised for different investigation queries.
 - A respondent observed that the impact of the implementation of a formalised investigation process in their particular context was not relevant since they did not charge for the work they performed.
- The suggested sub-processes, as described, are accepted by the respondents, namely:
 - Client acceptance, service considerations, risk management procedures, independence and engagement agreements;
 - Planning and strategic objectives of an engagement, including documented investigative plan incorporating the relevant disciplines (accounting, law, IT, investigative and risk management skills);
 - Gathering information and evidence, documenting evidence in an evidence file or system and safeguarding evidence as important;
 - Interviewing, using best practice interviewing skills, by planning the interview to achieve strategic objectives, recording the interview and using technology;
 - Analysis and verification of evidence;
 - Quality management, with all reported findings included in referenced working papers supported by documented physical evidence; and
 - Reporting on findings in a detailed forensic report, clearly and concisely reflecting on the sequence of events, supported by financial

information and documents, in a format that could be used in disciplinary enquiries and/or proceedings in civil and criminal courts.

4.3 Recommendations

The findings of this study have significant implications for the management of South African Commercial Forensic Practitioner practice. Based on the study findings, the following general and specific recommendations can be made:

Firstly, when the investigation process for Commercial Forensic Practitioners is implemented, it should be fully integrated with the budgeting process of the business, as this will ensure improved investigative performance by the business.

Secondly, more education and research on the investigation process for Commercial Forensic Practitioners should be conducted by the management of a practice before implementing such a process. Many practices had a misperception of the key processes housed within the perspective of the processes of their own practice. It was found that indicators that were supposed to be housed within the learning and growth as well as the customer satisfaction perspectives were listed, indicating that the Commercial Forensic Practitioners Process was incorrectly implemented and therefore did not have an improved effect in the financial performance of the business.

Lastly, management should persevere, as the implementation of the Commercial Forensic Practitioners Process is lengthy and should be incorporated throughout the whole business. If implemented in this way, it will lead to improved financial performance. Management's interest should not fade so quickly.

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