

# The Institute of Commercial Forensic Practitioners

## Standards Committee

### Reporting Work Stream: Reporting Standards and explanatory notes thereto

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## Table of Contents

1. General.....	3
2. The format, extent, nature and purpose of a forensic report.....	4
3. The qualitative characteristics of a forensic report.....	8
6. Content and substance of a forensic report .....	11



## 1. General

**1.001 It is a standard practice that the services rendered by a Commercial Forensic Practitioner are communicated and contained in a written or verbal forensic report.**

*Explanatory note – What is a forensic report?*

*A forensic report (written or verbal) is a narration of the following:*

- a. The purpose of the engagement, i.e., why was a Commercial Forensic Practitioner appointed.*
- b. What was done during an engagement (procedures performed) and may include information about what could not be done (limitations).*
- c. What was found (factual determinations and findings).*
- d. What can be deduced from what was found (conclusions).*
- e. What may be done next (recommendations).*

The gravitas of, and potential consequences associated with the issuing of a forensic report should demand from the Commercial Forensic Practitioner to invest significant effort into the planning, drafting and compilation of the forensic report. The forensic report forms the foundation of consequence management processes, remedial or legal action, and potential control improvement to be considered and/or instituted.

## **2. The format, extent, nature and purpose of a forensic report**

**2.001 It is advisable that the format, extent, nature and purpose of the report are agreed with the client.**

*Explanatory note – Why is this advisable?*

- a. To enable the Commercial Forensic Practitioner to appropriately plan, budget and project manage the investigation, it is recommended that the format, nature, and extent of the report are discussed and agreed with the client, prior to commencement of the investigation*
- b. If the end-product is clearly defined, a methodology and approach that will yield the appropriate results can be designed and followed.*
- c. It ensures that appropriately skilled resources are included in the investigation team.*
- d. It ensures prudent financial and project management.*
- e. It contributes to the management of expectations.*

**2.002 The format of the report should be informed and ultimately determined by consideration of the following:**

- a. Purpose and intended utilisation of the report;**
- b. Circumstances underpinning the request;**
- c. Nature of the procedures performed; and**
- d. Recipients of the report.**

## 2.003 There are various reporting formats.

### *Explanatory note – Reporting format*

*It is important to acknowledge that there are various reporting formats, which may either be written or verbal, or may depend on the nature and purpose of the commercial forensic investigation. A report may be:*

- a. An interim report – to provide feedback or if the investigation was executed in phases.*
- b. A draft report – to solicit permitted input and comments.*
- c. A final report – once the matter has been finalised.*

*Examples of to whom a report may be addressed, as well the respective nature and format of such report, can be seen below:*

#	Who the report is for	Purpose of the report	Possible format
1	Client liaison	Progress update	<ul style="list-style-type: none"> <li>• Email</li> <li>• PowerPoint or similar</li> <li>• Letter</li> <li>• Draft report</li> </ul>
2	Management	Action	<ul style="list-style-type: none"> <li>• Detailed report supported by exhibits and annexures (evidential material) *</li> </ul>
3	Board or Board committees	Decision making	<ul style="list-style-type: none"> <li>• Abbreviated report (findings, conclusions and recommendations – executive summary) **</li> <li>• PowerPoint or similar</li> </ul>

#	Who the report is for	Purpose of the report	Possible format
4	<i>Disciplinary proceedings</i>	<i>Facilitate disciplinary process</i>	<ul style="list-style-type: none"> <li>• <i>Detailed report supported by exhibits and annexures (evidential material)</i></li> <li>• <i>Charge sheets</i></li> <li>• <i>Affidavit</i></li> <li>• <i>Testimony</i></li> </ul>
5	<i>Mediation</i>	<i>Finding common ground</i>	<ul style="list-style-type: none"> <li>• <i>Detailed report supported by exhibits and annexures (evidential material)</i></li> </ul>
6	<i>Arbitration</i>	<i>Dispute resolution</i>	<ul style="list-style-type: none"> <li>• <i>Detailed report supported by exhibits and annexures (evidential material)</i></li> <li>• <i>Affidavit</i></li> <li>• <i>Testimony</i></li> </ul>
7	<i>Law enforcement agencies</i>	<i>Facilitate preservation and/or collection of evidence</i>	<ul style="list-style-type: none"> <li>• <i>Affidavit</i></li> </ul>
8	<i>Law enforcement agencies</i>	<i>Facilitate initiation or progression of criminal proceedings</i>	<ul style="list-style-type: none"> <li>• <i>Detailed report supported by exhibits and annexures (evidential material)</i></li> <li>• <i>Affidavit</i></li> <li>• <i>Testimony</i></li> </ul>

#	Who the report is for	Purpose of the report	Possible format
9	Lawyers	Initiation and/or facilitation of legal proceedings	<ul style="list-style-type: none"> <li>Detailed report supported by exhibits and annexures (evidential material)</li> <li>Affidavit</li> <li>Testimony</li> </ul>
10	Shareholders	Information sharing	<ul style="list-style-type: none"> <li>Letter</li> </ul>
11	Regulators	<ul style="list-style-type: none"> <li>Information sharing</li> <li>Action</li> </ul>	<ul style="list-style-type: none"> <li>Detailed report supported by exhibits and annexures (evidential material)</li> <li>Affidavit</li> <li>Testimony</li> </ul>

\* The terms “abbreviated report” and “short report” have the same meaning in this context.

\*\* The term “detailed report” and “long report” have the same meaning in this context.

**2.004 The format or status of the report, i.e., that it is a draft, progress, or final report, should clearly be indicated.**

**Explanatory note**

Specifically in relation to draft reports, such reports are often issued to solicit permitted comments, contributions and/or input from the mandator. The purpose of issuing a draft report should be to ensure factual accuracy.

The Commercial Forensic Practitioner should ensure that previous working versions and initial draft reports are dealt with appropriately to ensure that confidentiality and security is maintained.

The rationale underpinning this suggestion is to protect the credibility of the final report – the

*unauthorised disclosure of working and/or incomplete draft reports may undermine the integrity of the final report.*

*When a mandator provides comments, contributions and/or input, the Commercial Forensic Practitioner is not obligated to amend his/her report. Comments, contributions and/or input should be considered and if, after consideration, it is determined that a factual inaccuracy should be corrected, the correction should be incorporated into the final report.*

### **3. Qualitative characteristics of a forensic report**

#### **3.001 The contents of the report must reflect that the investigation and compilation of the report were conducted in an objective and independent manner.**

##### ***Explanatory note – objectivity and independence***

*A report can only be considered to be objective and independent if the Commercial Forensic Practitioner executed the engagement and compiled the report in an objective and independent manner. Given the importance of objectivity and independence these aspects are also addressed in the attribute and client engagement standards.*

#### **3.002 The report must be confined to the field of expertise of the Commercial Forensic Practitioner.**

##### ***Explanatory note – field of expertise***

*No engagement or reporting must be agreed to, unless the forensic practitioner has the necessary skill and experience to successfully conclude and report on the outcomes in a professional manner.*

*If the services of other professionals, such as doctors, engineers, quantity surveyors, actuaries, etcetera, were utilised during the execution of the engagement, it should be clearly qualified as such in the report.*





*Expert opinions included and expressed in the report must be clearly defined as such and the basis of the expert opinion must also be included.*

**3.003 The report should only address the scope of work and mandate for which the Commercial Forensic Practitioner was appointed.**

***Explanatory note – scope of work***

*The original scope of work, also referred to as the mandate must be agreed to in advance with the client and shall be verbatim documented in the forensic report. The report shall not deviate from the original scope or to whatever changes have subsequently been agreed upon with the client.*

*If the scope of work changed during the execution of the investigation, or if additional aspects were added to the scope of work, this should be recorded in the report.*

**3.004 The report must reflect adherence to relevant constitutional and legal requirements.**

***Explanatory note***

*The constitutional framework within which the Commercial Forensic Practitioner executes his/her work, demands consideration of the applicability of constitutional and various other legal requirements and principles, such as the audi alteram partem principle. Concerning last mentioned principle, an implicated party may be given an opportunity to provide facts and personal insight, to refute or substantiate known facts. However, concerns of witness intimidation, evidence destruction, abscondment, or asset dissipation, should also be weighed up against the appropriateness of how and when to apply this principle, as it may have an impact on the findings and conclusions. Legal advice should be obtained should last mentioned eventualities occur.*

*In some instances where the version of those implicated/potentially implicated is not obtained the Commercial Forensic Practitioner, may not be in a position to make certain adverse findings, conclusions, and recommendations against them in instances where the findings are not*

*supported through physical and/or factual evidence. This will then be considered as a limitation in the report as some findings may be subject to being adjusted upon consideration of the implicated party's response.*

*Adherence to these requirements, cannot be satisfied by the mere inclusion of a blanket statement that the constitutional and legal requirements have been adhered to. The report, when considered holistically, should reflect that during the execution of the investigation as well as the compilation of the report, these requirements were considered and complied with.*

**3.005 The report should reflect all relevant evidential material, information and views collated and considered.**

***Explanatory note***

*This relates to the requirement to objectivity and independence of the Commercial Forensic Practitioner. It is not the duty of the Commercial Forensic Practitioner to decide on the innocence or guilt of a person, and as such all evidence shall be documented and presented, regardless of the impact that it may have on the expected outcomes of the report. Commercial Forensic Practitioners should not be influenced by external expectations, and as such must include exculpatory and inculpatory evidence in the report even if it is contrary to expectations.*

**3.006 Reliance placed on evidential material considered, must be recorded in the report.**

***Explanatory note***

*When assessing evidential material, the Commercial Forensic Practitioner should be cautious to not to usurp the responsibility of the court or relevant forum. It remains the duty of the court or relevant forum to decide whether evidence should be admissible or not.*

**3.007 In instances where confidentiality, the interests of whistle-blowers, secrecy and/or legal privilege is applicable, it must be treated appropriately in the report.**

***Explanatory note***

*Commercial Forensic Practitioners shall ensure that all confidential and/or restricted information or intellectual property remain protected against unauthorised disclosure and in particular consider the interests of whistle blowers.*

**3.008 The report should be accurate.**

***Explanatory note***

*Care should be taken to ensure the accuracy of everything contained in the report, as it may have a detrimental impact not only on the professionalism and reputation of the Commercial Forensic Investigation but also on the reliance placed on the work of the practitioners and the outcome of the matter.*

*Furthermore, the report should, as far as possible, be devoid of spelling mistakes, typographical and grammatical errors and casting errors. When a report contains countless spelling mistakes and typographical and grammatical errors, it may have an impact on the reliance placed on the report.*

## **4. Content and substance of a forensic report**

**4.001 The content and substance of the report will be informed by the mandate, purpose, methodology, approach and procedures performed.**

**4.002 The following may be considered for inclusion in the report:**

**a. Cover letter;**

**Explanatory note**

*Letter addressed to the authorised recipient, usually describing at high level the reason for the report submission, status of the attached report, confidentiality and intended distribution, and what is required from the authorised recipient going forward.*

**b. A cover page, which may include:**

- (i) the date and/or version of the report;**
- (ii) the title of the report;**
- (iii) the name/s of the person/persons who commissioned the report;**
- (iv) the name (individual or entity) of the issuer of the report;**
- (v) the recipient/s of the report; and**
- (vi) a distribution list and the method of distribution.**

**c. Restrictions on utilisation of the report should be clearly indicated.**

**Explanatory note**

*Given the risk for forensic reports to leak, it is useful to agree with the intended recipients of the report on the method of distribution.*

*The distribution list and method of distribution can be indicated in the report.*

*It should be considered to development and implement an effective and secure report distribution plan/practice.*

*In today's digital environment, distribution can be managed digitally through version and access control, but once downloaded, a copy can be made or printed. It is therefore imperative that reports be marked by version and confidentiality status. Consideration may also be given to the inclusion of unique referencing and numbering of the report and copies distributed to monitor and control unauthorised and unintended distribution. When reports are transmitted electronically, consider sending reports in an encrypted, non-editable/format restricted manner and with password protection. It should be considered to the inclusion of a confidentiality clause where the distribution and access to the report are addressed.*



*The version of a report (e.g., final, progress or draft) should be clearly referenced as a draft to prevent the unintended utilization thereof.*

**d. Index**

***Explanatory note***

*An index to the content of the report is optional to the report, but is necessary for lengthy, complex or multi header reports. The index contributes to the reader experience by providing quick access, and cross reference to sections within the forensic report.*

**e. List of abbreviations, glossary and/or definitions of technical terms and acronyms used in the report.**

***Explanatory note***

*This may assist with the readability, consistency and uniform understanding of the terminology used in the report.*

**f. List of annexures, appendixes, and/or exhibits.**

***Explanatory note***

*The purpose of this index is merely to provide a list of the material attached to the report in order to direct the reader to the relevant item.*

**g. Introduction and background to the Investigation.**

***Explanatory note***

*This section should have a section providing a summarised background to the investigation, that would ideally include an overview of how the incident or issue had been identified, very high-level*

*overview of the allegation(s), and reason for engaging in the forensic investigation resulting in the report.*

*The background section does not replace an executive summary and as a norm should provide details with regards to information gathered preceding the investigation commencement date.*

#### **h. Scope of work and mandate.**

##### **Explanatory note**

*All forensic reports should emanate from a lawful instruction, or mandate assigned by a client or authorised person to the commercial forensic practitioner within the relevant ethical and legal framework.*

*The report should be confined to the scope of work and agreed upon mandate. Out of scope work creates significant risk and may discredit the findings and conclusions.*

*Where out of scope work had to be performed for a legitimate purpose and in support of the overall assignment, gap, and/or root cause analysis, the reason and link to the in-scope-work will need to be documented and justified.*

*Any scope or other limitations and / or disclaimers that may have an impact on the execution and / or findings. This may be under a separate heading or sub-heading to the scope of work.*

#### **i. Time period investigated/considered.**

##### **Explanatory note**

*This section could also be included in the scope of work section but serve to provide clarity on the scope or period of time within which the transactions/conduct which have been investigated according to the Commercial Forensic Practitioner's mandate, occurred.*

#### **j. An executive summary.**

##### **Explanatory note**

*The inclusion of an executive summary must be regarded as optional and should be considered in conjunction with the main report and client requirements.*

**k. Procedures performed.**

**Explanatory note**

*The rationale for the execution of the investigative and analysis procedures performed should be recorded in the report.*

*The procedures performed determine in general the extent of the work executed and identify information and evidence not considered. Information and evidence not considered, as well as the reasons therefore can also be addressed under a separate heading for disclaimers and limitations.*

**l. Relevant law (e.g., legislation or regulations), policies and procedures and/or regulatory framework considered.**

**Explanatory note**

*Where the forensic investigation considered the application of internal policies, procedures, practices, laws, regulations and/or other prescriptive practices, reference thereto should be included in the forensic report.*

*This provides some insight into the elements and evidential requirements assigned to the issue considered during the forensic investigation, and provides some insight to the layman into the logic applied during the investigation.*

**m. If used, assumptions made should be clearly defined and the foundation for the assumptions should be clearly described.**

**Explanatory note**

*Forensics is about establishing (and reporting) ascertainable and admissible evidence/facts. In certain instances, however, including assumptions may be required or appropriate, but caution must be exercised should assumptions be utilized in the investigative process and eventually included in the report, and that it should be properly motivated.*

**n. Any scope or other limitations and/or disclaimers that may have an impact on the investigation and its findings.**

***Explanatory note***

*This includes typical disclaimers relating to e.g., reserving the right to amend the report should new evidence not considered come to the fore, that legal advice is not provided, that an audit has not been conducted, reliance placed on evidence, etc. Specific limitations, unique to the particular matter should also be included for instance the availability of certain evidence or access to possible witnesses or suspects or time constraints.*

*The report should only address aspects within the ambit of the mandate and procedures and analysis performed. However, there may be instances where a Commercial Forensic Practitioner has identified certain additional procedures that need to be performed but is unable to do so for reasons outside of the Commercial Forensic Practitioner's control. These would generally be included in a report as disclaimers or limitations. procedures performed.*

**o. Factual findings.**

***Explanatory note***

*Factual findings are a systematic and logical presentation of the determinations made by the Commercial Forensic Practitioner based on the information obtained, procedures performed and evidential material considered during the execution of the investigation.*

*The Commercial Forensic Practitioner should avoid expressing opinions (unless required to provide an expert opinion if and when required) and/or speculating. The Commercial Forensic Practitioner should ensure that opinions are not recorded as fact.*



**p. Conclusions and/or a summary of findings.**

**Explanatory note**

*The purpose and nature of the deliverable, as agreed with the client, should guide the Commercial Forensic Practitioner regarding composition of the conclusion or summary of findings.*

*Conclusions should not make reference/draw inference on a person's guilt or innocence or state that the person has committed an offence or particular transgression.*

**q. Recommendations.**

**Explanatory note**

*Recommendations, if mandated, should flow from competence, knowledge, skill, experience and qualifications of the Commercial Forensic Practitioner and should flow from all the procedures and analysis performed, but should not purport to provide legal advice, usurp the role of a court or similar forum, or the rendering of professional services other than commercial forensic practice.*

**r. Exhibits and annexures to the report.**

**Explanatory note**

*Exhibits obtained, i.e., documents and/or data provided to the Commercial Forensic Practitioner, and annexures, i.e., tables, appendices, illustrations, charts, process flows, infographics created and compiled by the Commercial Forensic Practitioner, which are referenced in the report and/or attached to the in the report, must be clearly referenced and the source should be indicated.*

*Exhibits relied on should be included in the report by appropriate reference thereto, preferably with a footnote.*



*Tables, annexures and appendices compiled by the Commercial Forensic Practitioner should be clearly described and referenced.*

*Working papers should not be attached to the report.*