In this issue, we focus on: Whistle-blowing and Ethics

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Compliance and transparency are of paramount importance today. For this reason, whistle-blowing laws are being enacted to encourage employees to come forward without fear of reprisals. While these rules safeguard employee interests, multi-national companies are facing increasing challenges relating to whistle-blowing, ethics and retaliation claims.

Knowing how to appropriately anticipate and manage these issues could prevent significant negative exposure in all media, potentially and unnecessarily damaging a company’s image and reputation.

Country-by-country and EU whistle-blowing rules need to be taken into account in setting the best practices and policies in this growing area of risk, including what an employer must do when faced with a whistle-blower claim, such as whether an investigation is required, protections of the employee who complained of company practices and litigation issues. Best practice requires companies to take action in advance by creating a hotline and training its employees in ethical behavior.

This edition of our global hot topics guide is dedicated to helping global companies understand how to manage these whistle-blowing and ethics issues in 31 countries around the world.
Whistle-blowing at work

Whistle-blowing at work is reporting or disclosure of inappropriate behavior or wrongdoing of the employer. The labor inspection and State Labor Inspectorate law serves inter alia as a whistle-blower law for employees or work syndicates in Albania. Its main scope is securing the enforcement of the labor legislation through the State Labor Inspectorate (SLI).

Labor legislation in Albania includes:
- Conventions ratified by the Albanian Parliament addressing labor inspection, occupational safety and health, and labor inspection (agriculture)
- Labor laws addressing health and security at work, foreigners, collection of social security and health contributions, and social security services
- Respective bylaws

Any employee or the work syndicate (if there is one) has the right to complain in writing or verbally to the SLI if the employer demonstrates inappropriate behavior/wrongdoing and violates a provision of the labor legislation. The SLI must treat the complaint confidentially during its processing as well as during any inspection visit at the worksite.

Any employee/work syndicate can submit SLI claims related to the infringement/breach of:
- Rights granted by the labor legislation such as the right to have equal treatment and non-discrimination at work
- The obligation of employers to include employees under the obligatory social security and health contributions scheme
- Health and security standards required at worksites

The whistle-blower can be anonymous and submit the claim online to SLI, which should respond to the whistle-blower within 10 days on the merits of the claim.

SLI can impose measures and formulate recommendations that should be met within the period of notice, or impose penalties if the infractions are very serious. If the entity does not improve the working conditions, the SLI may then suspend or stop the economic activity of that entity.

Non-appealed inspection acts or confirmed decisions become executive titles, which are only delivered by the court.

The law does not mention specific protections granted to the whistle-blower except treating the claim with confidentiality.

As per the publicly available information published in the official website of SLI, during 2017, inspections initiated as a result of a whistle-blower complaint amounted to 3.3% of the total number of labor inspections at a national level. Although there is an increase of inspections initiated as a result of a claim by 106 inspections during the period of January–August 2018, the rate of work complaints is still low.

This can be attributed to the lack of training at work regarding the right to complain, to be protected and to be treated confidentially.

Another reason for the low rate of whistle-blowing at work might be that the concept is a rather recent phenomenon, still to be tested in practice in a wide range of sectors.

Whistle-blowing and Ethics

Whistle-blowing is a valuable tool in any organization's corporate governance strategy, because it empowers employees to act on misconduct and helps maintain a safe workplace, while protecting profits and reputation.

However, in Argentina, in terms of Corporate Social Responsibility, the voluntary aspect governs. These codes of conduct depend on the company's self-assessment to the extent that is convenient to its image and prestige. Indeed, non-observance does not cause any consequence or legal sanction.

New Law

On 1 March 2018, Law 27,401 came into force, which establishes the criminal liability of private legal entities for corruption offenses.

Scope. The law encourages the cooperation of companies in the prevention and investigation of corruption. Legal persons may be exempt from punishment and administrative liability when they have:

- implemented an integrity program with minimum elements defined in the law, and
- self-reported the fact to the authorities and returned the undue benefit.

Although the implementation of an integrity program is, in principle, a voluntary decision of each company, Article 24 of the law makes it mandatory for all contracts with the Government. The law not only makes companies responsible for the conduct of their managers and employees, but also by any third party – suppliers, distributors, business partners – to obtain an undue benefit for the company.

To exempt their directors from punishment or accede to an agreement of effective collaboration, the integrity programs that companies implement must incorporate complaint lines and internal investigation procedures. These procedures must be compatible with the constitutional rights of the persons reported and subject to an investigation.

Because the legislation is recent, a practice adopted by the companies prior to Law 27,401 is the establishment of complaint lines that allow employees to make complaints anonymously. This has not yet been regulated by the law or its decree. Protections for whistle-blowers have been fixed in current law. But an effective compliance program should include a mechanism so that employees of an organization and others can report alleged or actual misconduct or violations of company policies confidentially and without fear of retaliation.

Best practice. For whistleblower complaints, a) define the types of complaints; b) have round-the-clock availability c) keep different channels available and publicize them; d) preserve anonymity; and e) determine who will receive the reports.

In Argentina, the law was recently enacted and has a very low implementation rate. In practice, companies have not yet seen concrete and generalized results of the implementation of an integrity system, especially in those companies that must comply because they contract with the Government. But the course has been set.
Whistle-blower protection

In Australia, whistle-blowers play an important role in promoting transparency and accountability across private and public sector organizations by reporting inappropriate behavior and wrongdoing to protect the public interest. Numerous Australian statutes extend significant protection to whistle-blowers, to encourage them to disclose their information without the risk of liability or other adverse consequences.

Relevant statutes

In Australia, whistle-blowers are protected under a range of state and federal statutes. The main federal whistle-blower laws in Australia are the Public Interest Disclosure Act 2013 (Cth), Fair Work (Registered Organizations) Act 2009 (Cth) and Corporations Act 2001 (Cth). State, territory and other legislation such as the Work Health and Safety Act 2011 (Cth) may also provide protection to whistle-blowers. Many state and territory laws apply in particular to whistle-blowing with respect to conduct in the public sector.

Definitions

Depending on the applicable legislation, whistle-blowers may include individuals generally; current and former public officials; officers, employees and members of an organization; and a person who has or had a contract for the supply of services or goods to an organization, officer or employee of the organization. Federal laws tend to apply to a more confined group of whistle-blowers, while state and territory whistle-blower protections often extend to any person who discloses public interest information.

In some cases, whistle-blowing complaints are made directly to, and must be handled by, the receiving organization or employer. Other complaints may be made to relevant authorities, such as the Fair Work Commission, Fair Work Ombudsman, Australian Securities and Investment Commission and the Commonwealth Ombudsman.

Whistle-blowers will generally need to have reasonable grounds to suspect that the information indicates one or more instances of improper conduct (as defined by the relevant law) and make their disclosure in good faith.

Anonymity

Depending on the relevant legislation, the discloser may remain anonymous. For example, the Public Interest Disclosure Act 2013 (Cth) allows whistle-blowers to remain anonymous when making a disclosure. A similar approach is taken in most state-based whistle-blower legislation. Some legislation requires whistle-blowers to provide their name to the relevant authority when making their disclosure. However, whistle-blower legislation also often makes it an offense for a person who receives or is aware of a disclosure to disclose the identity of the whistle-blower.

Scope of protection

Whistle-blowers are generally not subject to any civil or criminal liability in relation to a disclosure, although the scope of protection varies. Whistle-blower laws also usually prohibit reprisal action or threats to cause detriment to whistle-blowers. When responding to whistle-blower complaints, organizations must refer to the procedures and protections outlined in the relevant legislation; these will vary depending upon the applicable law. However, as a general guide, often an investigation will be required and potentially referral to an external body. At all times, care must be taken to protect the whistle-blower.
Regulation

Brazil is a signatory country of the United Nations Convention Against Corruption, enacted by Decree 5.687/2006. Article 33 of that decree establishes that participating countries will consider appropriate measures to protect those who report corruption to the competent authorities.

In addition, an interagency organization called the National Strategy to Combat Corruption and Money Laundering (ENCCLA) has addressed the subject of whistle-blowers in Act n. 4 of 2016. The term in Portuguese for whistle-blower is denunciante. However, it is more common to use the English term and the definition used by the international legal community: any person who takes relevant information about an illicit civil or criminal act to the authorities.

Recently, Law 13.608/2018 was published in Brazil, requiring that phone lines be in place to receive whistle-blower reports and granting the possibility of rewards to whistle-blowers.

Anonymity and reward

Although communication channels to anonymously report illegal activities are already well-established in Brazil, not until 2018 was such anonymity actually guaranteed by law.

Law 13.608/2018 established the right for the whistle-blower to be anonymous. Additionally, those who opt to identify themselves to the authorities can keep their identity secret from the public.

The same law mentions the possibility of paying rewards for information that could help solve crimes. To receive a reward, whistle-blowers have to reveal their identity to the authorities.

Not common

Whistle-blower reports of illegal activities are not common in Brazil. Perhaps if more detailed legislative protections are passed in the future, such activities will become more frequent.

A more common occurrence has been for people involved in illegal activity to report it, rather than whistle-blowers who have had no involvement.

In such cases, those who report illicit activity may get a reduction of the penalties applicable. Several corruption cases were recently identified in Brazil after one of the people involved provided information to the authorities.

Whistle-blowing at companies

Brazilian companies usually adopt a telephone channel to allow employees to report inappropriate or illicit behaviors. The identity of the whistle-blower is not published, and an internal investigation is carried out. Once the information is confirmed, it is common for the whistle-blower to be dismissed. If it is found that the employer is justified in terminating an employee, the employee may lose most labor rights.

Next steps

It is important that more detailed local legislation about whistle-blowing be enacted in Brazil, so that people will feel more comfortable about reporting illicit activities. If people are not sure that their anonymity will be preserved, they may not want to cooperate because it may result in exposure and risk.

In addition to the law, stronger communication is needed about the whistle-blower issue, to encourage people to safely report any illicit activities. The establishment of more rewards would also have a positive impact.
Anonymous whistle-blowing has no legal effect

Although citizens’ rights to make complaints, suggestions and petitions to the authorities are constitutionally guaranteed, Bulgaria is among the countries that still do not have a legal act specifically dedicated to the protection of whistle-blowers. Thus, there is not a formal legal definition of what “whistle-blower” means, and there are no defined channels for reporting locally.

Due to this lack of an explicit legal framework and the existing risk of facing criminal charges for defamation, employees often fear exposing illegal or inappropriate activities at the workplace. Moreover, due to historically conditioned reasons, whistle-blowers are usually seen as “traitors” or “organizational dissidents.” Nevertheless, it is worth noting that some existing normative acts, namely the Administrative Procedure Code (APC), the Bulgarian National Code for Corporate Governance and the Act on Countering Corruption and Seizure of Illegally Acquired Property, contain provisions relating to the concept of whistle-blowing.

The effectiveness of those legal acts is rather questionable, as they contain very general provisions, which do not ensure sufficient protection in this area. Only the APC covers a wide range of misconduct, as it regulates disclosures related to corruption, abuse of power, mismanagement of public property and other illegal acts that affect state or public interests. However, its application is exclusively limited to public-sector wrongdoing, although any person or organization is encouraged to notify violations of the law.

However, legislation does not provide for a particular body to receive and handle these issues. It should be also underscored that anonymously made disclosures, as well as disclosures relating to violations committed more than two years ago, are not subject to further investigations. Not observing the confidentiality of whistle-blowers also greatly limits the law’s effectiveness, as many whistle-blowers fear threats or employment dismissals. Moreover, people feel their reports will have no impact.

Further, the labor legislation applicable in the private sector does not expressly contain specific regulations in the area of whistle-blowing. The labor code only includes very general provisions granting workers the right to compensation in cases in which they are subject to unlawful dismissal, for example, but it does not directly refer to whistle-blowing as a reason for dismissal.

This lack of regulation in the private sector leaves employees without meaningful protection if they decide to report wrongdoings at work. A common practice of Bulgarian companies and subsidiaries of foreign companies in the private sector is to govern whistle-blowing procedures through internal regulations. However, similar to the public sector, anonymous disclosures are usually not encouraged.

Following a number of whistle-blowing related cases in Bulgaria that received widespread media attention in the last few decades, public interest toward the concept has grown significantly. Despite this fact, Bulgarian legislators still seem reluctant to introduce a draft bill regulating whistle-blowers’ protection.

In conclusion, given the limited provisions governing whistle-blowing in the public sector and the lack of any applicable legislation in the private sector, whistle-blowing is still not a widely used tool in Bulgaria.

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Whistle-blowing and Ethics

Given the complexity of today’s economy, enforcement of various laws is becoming increasingly challenging. As a result, enforcement agencies have begun looking to people who may have direct knowledge of noncompliance with specific laws by an organization to come forward and notify the authorities. Recognizing that this could tarnish the individual’s relationship with the organization, the Canadian legislature has begun implementing laws to protect whistle-blowers.

Multiple jurisdictions

Much of the information that whistle-blowers would be reporting is individually legislated by each of Canada’s provinces and territories. The federal government legislates only matters that are deemed “federal undertakings.” While there are nuances among jurisdictions, some of the high-level elements discussed below are applicable.

Federal whistle-blower protections

The following are some of the most common federally regulated subjects of reported information for which whistle-blowers have protections against reprisal from the reported organization:

- An offense that is (or that the employee thinks is) being committed by the employer contrary to any federal or provincial act or regulation (Criminal Code)
- Noncompliance with health and safety standards (Canada Labour Code)
- Prohibited anti-competition offenses under the Competition Act
- The release of certain toxic substances (Canadian Environmental Protection Act)
- Instances of prohibited discrimination (Canadian Human Rights Act)

Provincial whistle-blower protections

The following are some of the most common provincially regulated subjects of reported information for which whistle-blowers have protections against reprisal from the reported organization (the degree of protection varies by province):

- Noncompliance with employment standards
- Noncompliance with health and safety standards
- Instances of prohibited discrimination
- Violation of environmental protection legislation
- Violation of securities laws (this can result in rewards to the whistle-blower in certain circumstances)

Can whistle-blowers be anonymous?

While some whistle-blower regimes focus on restricting organizations from carrying out reprisals against whistle-blowers, others also aim to protect whistle-blowers’ confidentiality. However, in some cases, it is impractical to maintain the confidentiality of the whistle-blower because of the nature of the information being provided to the enforcement agency.

How should organizations handle whistle-blowers?

Many organizations view whistle-blowers as a hindrance to their ongoing operations. However, it is recommended that organizations comply with all laws and regulations to which they are subject. Practically, this can sometimes be difficult; noncompliance can sometimes creep up, given the number of laws that will apply to any given organization. As a result, organizations should consider implementing internal whistle-blowing processes to promote internal reports of noncompliance with a view to improving the organization’s compliance and minimizing the risk of penalties, fines and damages.

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Whistle-blowing and Ethics

Colombia has a special regulation on workplace harassment (Law 1010, 2006). Obligations and prohibitions for employees are spelled out in the Labor Code, along with rules for work agreements and internal processes for companies.

Workplace harassment

Colombian law defines this kind of harassment as persistent and demonstrable conduct against an employee by a colleague or superior with the purpose of generating fear, intimidation, and anguish to make an employee resign.

The purpose of Law 1010, 2006, is to define, prevent, correct and punish several forms of aggression, mistreatment, humiliation and, in general, any offense against human dignity exercised in a work relationship.

Furthermore, Resolution 1356, 2012, created the Coexistence Committee as an internal organism that companies must implement to expressly take charge of workplace harassment issues. The purpose of this committee is to: (i) undertake harassment claims by any employee who considers himself a victim of workplace harassment; (ii) analyze and hear the parties related to the claim; (iii) determine the existence or not of harassment; and (iv) define the eventual sanction to the person who committed it. In cases where harassment is not found, the committee will recommend preventative or corrective measures to better protect the work environment.

If a Coexistence Committee has not been implemented by a company, the harassed employee can file a complaint to the Ministry of Labor.

The committee, as a good practice, works with labor risk entities as part of the Colombian Social Security System to create alternatives to poor conduct and control the effects of it, such as stress or illness.

Special protection for employees

Whistle-blowers who file a harassment claim to the Coexistence Committee or the Ministry of Labor have a special protection period of six months from when the claim is filed. During this time, the employee cannot be dismissed or experience diminished work conditions.

Also during this period, the Coexistence Committee or the Ministry of Labor will begin an investigation to determine the existence of harassment. If the harassed employee is terminated, he or she can request reinstatement through a labor judge. As a consequence of this measure, employers can be required to pay salaries, fringe benefits and Social Security contributions for the time elapsed between termination and the employee’s reinstatement. The labor judge can also deem special indemnities.

Anonymous complaints

As a general rule, Coexistence Committees do not allow the filing of anonymous complaints. In order to analyze and consider the correct measures to handle the situation, it is necessary to know the actors involved in a harassment complaint. This also will be helpful to determine eventual sanctions against the person who commits this conduct, including termination with fair cause.

For other issues concerning ethics and inappropriate labor practices, whistle-blowers can file anonymous claims to the Ministry of Labor. This entity is obliged to record and investigate them.

Best practices

- New local companies must create a Coexistence Committee.
- Companies should develop strategies and communications to prevent workplace harassment and help maintain a good work environment.
- Employees should be invited to speak up (whistle-blow) about any instances of harassment.
- A company’s internal work and safety regulations must include programs and measures to handle the health effects caused by harassment.
Whistle-blowing and Ethics

In the Czech Republic, regulations concerning whistle-blowing are rather fragmented, as a clear definition is missing. In the past, the Czech government proposed incorporating a regulation dealing with whistle-blowing, as well as the protection of whistle-blowers, in the Czech Anti-Discrimination Act. However, the proposed amendment was ultimately refused by Parliament, and the issue of whistle-blowing has been put on hold. A regulation in the Czech National Bank decree is dedicated solely to controlling mechanisms in the financial sector. A general regulation is contained in the Czech Labor Code, in the government regulation related to reporting suspicious conduct that is consistent with committing an offense vis-à-vis employment relationships in the public sector, and in the Czech Criminal Code. Nevertheless, these laws do not provide any comprehensive regulation with regard to whistle-blowing and other related conduct.

Shortcomings

For instance, the Labor Code aims to protect employees from any arbitrary and discriminatory dismissal, and to ensure fair treatment of such employees, but does not provide any further guidelines on how the employees can raise complaints with their employer. Nor does it provide any specific protective measure with regard to retaliatory acts.

The procedures for following up on whistle-blowing reports are unclear, and there is no specialized institution dedicated to dealing with whistle-blower disclosures. Whistle-blowers who are subjected to retaliatory acts must rely on the courts for legal remedies and recourse. The provisions of the Labor Code are supplemented by references to the Anti-Discrimination Act, which most notably deals with prohibited conduct and elaborates on discriminatory acts. Notwithstanding, the law does not set forth protective measures for those who have, in good faith, reported acts that were committed in breach of commonly accepted social values, and it does not prescribe punitive measures to be imposed upon the perpetrators of these acts. According to the Criminal Code, if employees or other individuals wish to report criminal behavior that has been committed (e.g., at the workplace), the individuals may file a non-anonymous complaint with the police, with a request not to disclose their identity in order to protect their rights and personal security and/or safety. It is possible to seek witness protection in the event of particularly dangerous or serious circumstances (e.g., the possibility of serious harm to an individual’s health or property, or violations of an individual’s constitutional rights). Moreover, under the Criminal Code, an individual’s failure to report having witnessed a crime is a crime ipso facto. As such, a person who fails to report a crime is punished by law; however, stipulations are lacking in terms of providing for the corresponding and proportionate protection of an individual who abides by the law and reports a crime.

Safeguard initiatives

Because of the lack of regulation, as well as the fact that whistle-blowing has become a hot topic over the past few years, there have been various initiatives seeking implementation of adequate safeguards. Transparency International – Česká republika o.p.s. has established a Whistleblower Centre. In addition, the Czech Constitutional Court has recently provided guidance on the whistle-blowing issue, and, at the very least, concluded that the principle of proportionality must be applied – that it is necessary to weigh public interest vs. employee loyalty.

Despite the failures of former governments, attempts are being made to enact regulation of whistle-blowing under labor law in the private and public sectors alike. Additional light could also be cast on this issue by the settled case law of the Czech courts.
No designated law for whistle-blowers

Generally, whistle-blowers are people who disclose malpractice or illegal or unethical operations. The concept of a whistle-blower is not very well-known in Finland, and it has not been discussed widely in public or the media.

Whistle-blowers are not defined by law in Finland, nor does the country have a designated law to protect whistle-blowers. As a result, there are no official channels for whistle-blowers to disclose wrongdoings. The process for whistle-blowers is mostly nonregulated, even though there are some scattered provisions in different laws. Thus, the practice of whistleblowing in Finland is partly supported by a range of different laws and company practices.

Enabling disclosures and protecting whistle-blowers have been developed through several regulations, including the following:

- Employment laws support equal treatment of employees and an employee’s right to report issues, such as those related to health or safety at work.
- The Credit Institution Law and the Finnish Trade Secrets Act enact specific procedures for reporting malpractice and wrongdoings. According to the Credit Institution Law, credit institutions are obligated to have procedures for employees to report a suspected breach of financial market regulations within the credit institution. The Finnish Trade Secrets Act allows some freedom from violating protected trade secrets when revealing illegal or wrongful activities.
- There is no separate agency for anti-corruption in Finland. Depending on the case, one can file a report of malpractice to authorities such as the police, a Parliamentary ombudsman, an industrial safety authority or a state auditor’s office.

Practices within organizations

Even though the laws do not regulate a specific way for whistle-blowers to report malpractice, some organizations have their own procedures for doing this (e.g., an ethics hotline or similar).

According to research from 2011, half of the biggest companies in Finland enabled internal reporting of malpractice. Often the recipient of the report is the immediate superior of the whistle-blower or of the internal audit unit. In many cases the report can be filed electronically. Half of the companies included in the research also allowed reporting the malpractice anonymously. Notification channels differ significantly from company to company.

Future progress

In April 2018, the European Commission has proposed a directive on the protection of persons reporting breaches of European Union law. The Finnish Council of State sees the objectives of the proposal positively, and Finland has commenced preparations for a more detailed evaluation of the directive’s impact on local legislation.

Also, a new website to identify and prevent corruption is being planned in Finland and will launch in December 2018. The site will provide information about corruption, though the website itself will not serve as a place to report corruptive operations.

Based on other laws and related activities in progress, it is likely that Finland will develop a whistle-blowing framework in the near future.
Whistle-blowing and Ethics

France has faced significant scandals in recent years related to whistleblowers. The Mediator case (a weight-loss drug, believed to have killed hundreds of people), is a notable example. At the time of these scandals, whistleblowers were not protected by a specific whistleblowing law in France.

However, in specific situations, laws against dismissal and discrimination in cases of environmental threats, conflicts of interest, harassment or criminal offenses, provided some layer of protection. Because of this scattered legislation, protections for whistleblowers were dubious, as no general protection was provided by Law.

This has changed with the enactment of the “Sapin II” Act enacted in 2016. Since then, French legislators passed a most stringent series of protections, clearly encouraging disclosure of information by whistleblowers without fear of retaliation or sanctions.

Definition of whistleblower

The Sapin II Act of 8 November 2016, supplemented by a decree of April 2017, defines whistleblowers as people who report or reveal, in good faith and without personal interest a crime or offense, a serious and clear violation of an international commitment, law, regulation, or a threat or a serious harm to the public interest.

Before this Act, France had six different regulations on whistleblowing regarding various sectors (e.g., financial, environmental, public sector) that were not uniform. The Sapin II Act is considered as a major step, as it creates a common status for whistleblowers regardless of the scope of the alert, which significantly increased their protections, and sets up a “professional” whistleblowing system as of January 1, 2018.

Protections

Only an individual can be considered as a whistleblower and raise an alert under French law, which means that a company cannot benefit from this status. The whistleblowers’s protection includes the employees of the company directly concerned by the alert, but also any “external” or “temporary” staff.

Whistleblowers benefit from criminal immunity which allows them to disclose information identified as confidential. This immunity applies provided that the information disclosed is necessary and proportionate to the preservation of the interests involved, and intervenes within the legal requirements. The intent of the whistleblowers should not be to harm the persons concerned by the alert. The protection granted to whistleblowers includes any disciplinary measure or sanction, based on the alert raised.

If an employer seeks to retaliate by dismissing a whistleblower because of a disclosure, the dismissal will be considered as discriminatory and thus null and void. The disclosure, however, of information considered as national secrecy, protected by the medical secrecy or the attorney-client privilege is not protected. The Sapin II Act intends to prevent any potential obstruction of a whistleblower by providing a sentence of imprisonment of up to one year, and a penalty of EUR 15,000 which could be pronounced in case of obstruction, or attempt to obstruct “in any manner”. If a company to seek a complaint for defamation against a whistleblower, a sentence of imprisonment of up to three years, and a penalty of EUR 30,000 could be incurred by the company.

Best practices

All companies with at least 50 employees are required by French law to implement an internal disclosure procedure. This procedure must provide for the ways in which individuals report their disclosure, the person to whom the disclosure must be made (which must be the employee's direct or indirect supervisor, the employer, or a specific person within the Company), and the measures taken to guarantee the confidentiality of the disclosure. The employer must inform employees of the procedure implemented within the company. There is no specific sanction provided by French law in case of non-compliance with the above requirements. Nevertheless, an employer that does not implement such a procedure could risk confidentiality information be directly disclosed to the public through the press or social networks. In other words, if a process is not put in place by the employer, the employee is free to disclose the information in any way he/she wishes.

The EU draft Directive

The European Commission proposed in April 2018, a new Directive to strengthen the whistleblowers’s protection across Europe. Recently, on 20 November 2018, the Committee on Legal Affairs of the European Parliament adopted a report intending to increase the rights granted by the European Union to whistleblowers. While only 10 member states ensure a full whistleblower protection, the goal of the new proposed Directive would be to harmonize this protection throughout Europe and fill the gap created by reluctant countries that, have not yet ensured any whistleblowing protection. Only time will tell whether this EU legislation will have a positive impact by extending the protections throughout Europe to fight corruption.

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Whistle-blowing laws

The Labor Code of Georgia does not outline the concept of a whistle-blower and its respective protection. Further, the Law of Georgia on Entrepreneurs does not provide any regulation on disclosure of unethical, illegal or illicit behavior within an organization.

The Law of Georgia on Conflict of Interest and Corruption in Public Service (Law on Corruption) defines whistle-blower and affords protection. The Law on Corruption mainly aims to prevent, discover and eliminate conflict of interest and corruption in public institutions, as well as provide the foundation for whistle-blower protection and the rules of ethics and conduct. The Law on Corruption defines a whistle-blower as a person who, including anonymously, requests that an authority in charge review possible misconduct of a public servant that prejudices or may prejudice the public interest and the reputation of the respective public institution. The authority that reviews the complaint may be a division of internal control and/or official inspector of the respective public institution.

The Law on Corruption prohibits intimidation, harassment, humiliation, persecution, oppression, moral or material damage, violence, threats or discrimination against whistleblowers or their family members. It is also against the law to initiate civil, administrative or criminal prosecution or proceedings against and impose liability on the whistle-blower, unless they are not connected to the act of disclosure or aim to infringe sovereignty and security of the state. The head of the respective institution monitors the whistle-blower’s protection.

Commercial bank code

In addition, the Code on Corporate Governance of Commercial Banks (Code) sets forth the obligation for the supervisory board members of the bank to constantly monitor the bank’s anonymous whistle-blowing system for its effectiveness and impartiality. The Code does not provide the definition of whistle-blower, nor the process of reporting/disclosure of any inappropriate behavior or wrongdoing. The Code does provide that whistle-blowing is anonymous. Those who exercise the whistle-blowing right must be fully protected from any potential damage or discrimination.

The Code was adopted on 26 September 2018 by Order N215/04 of the President of the National Bank of Georgia. Its requirements apply to commercial banks as well as the branches and subsidiaries of foreign banks. Considering how recently the order was enacted, the effectiveness and impartiality of the anonymous whistle-blowing system within banks has not yet been analyzed.

Code on Ethics

In addition to the adoption of the Code, the National Bank of Georgia, on 9 July 2018, adopted the Code on Ethical Principles and Standards of Professional Conduct for Commercial Banks (Code on Ethics).

The requirements of the Code on Ethics apply to commercial banks carrying out activities in Georgia. The Code on Ethics further applies to shareholders, administrators and employees of the commercial banks.

Its purpose is to ensure ethical conduct of people involved in banking, which in turn helps the reputation of the banking system, boosts consumers’ trust and aids the banks’ sustainability and the community’s welfare.

The Code on Ethics requires the commercial banks to, among other things, submit applications or complaints about violations of ethical requirements and standards by people involved in banking. The anonymity of the person filing the complaint shall be protected if the person requests.

Commercial banks are required to establish an authority that will monitor the banks’ internal standards and accept and review the applications/complaints. The authority will have the right to make decisions on the applications/complaints and, if violations are revealed, impose measures against violators. The authority must base its decisions on the Code on Ethics, the internal standards of the commercial banks and standards of the CFA Institute, general ethical norms, and principles of non-discrimination and impartiality.

The Code on Ethics further provides that decisions of the authority can be appealed. Appeals are to be reviewed by the supervisory board or the ethics committee of the commercial bank. The supervisory board or ethics committee may decide to review the matter again, amend the measures used by the authority, or uphold or repeal the authority’s decision.

Since the Code on Ethics was adopted only recently, its effectiveness is to be analyzed in the future.
There is no specific legislation on whistle-blowing in Germany despite growing attention on this topic. Efforts to regulate whistle-blowing have failed in the past especially due to objections from employers’ associations.

In a broad sense, whistle-blowing is the publishing of true or alleged wrongdoings or violations in companies (e.g., illegal actions, corruption, violations of tax, social security, occupational health and safety and environmental protection rules) through critical statements, complaints or reports by an employee.

Since there are no specific institutions and mechanisms to receive and investigate disclosures and to grant whistle-blowers any kind of security, any potential protection results from general labor law regulations such as protection against unfair dismissal and the fact that an employer may not penalize employees making reasonable use of their rights.

Breach of contractual duty of loyalty

Labor law sanctions in reaction to an employee’s complaint against their employer have been the subject of labor court jurisdiction in single cases.

The reporting of wrongdoings in a company creates a conflict between the employer’s interest in protecting his good reputation, his business interests and the secrecy of internal processes and data on the one hand, and the employee’s legitimate interest in correcting the wrongdoings by involving and informing the public in the event of a significant violation on the other hand.

A balancing of these interests is particularly important in the context of protection against dismissal, namely in whether the employee’s complaint against the employer constitutes an unlawful breach of the duty of loyalty under the employment contract and thus an important reason for dismissal.

An assessment depends on the circumstances of the individual case, whereby the previous conduct of the parties, the motive for the complaint and the quality of the possibly threatened legal interests are also of importance.

Employee’s right to notification

In the past, complaints against the employer were considered a breach of the duty of loyalty under the employment contract and thus a reason for dismissal. Employee protection has become more important in court decisions. According to the highest labor court, employees’ actions motivated by the rule of law cannot justify a termination without notice.

But it is a consequence of the contractual duty of consideration of the employee that the employee is only entitled to report if he/she has a legitimate interest in exercising the existing civil right and that the report does not constitute a disproportionate or hasty reaction to information that has become known and must not result in any damage to the employer (e.g. if the negative publicity associated with the initiation of criminal proceedings endangers the existence of the employer).

A report may be unreasonable especially if the employee has not previously tried to solve the problem within the company. However, an internal complaint cannot be expected from the employee if it is not merely a minor offense or if employees would otherwise expose themselves to prosecution.

Internal whistle-blowing rules

In principle, every employee is obligated to immediately notify his employer or superior of any foreseeable damage or disruption. Further notification obligations may result from internal whistle-blowing rules. Internal compliance or ethics guidelines can be used to impose certain conduct on employees, combined with the obligation to report violations of the provisions of the code of conduct in accordance with a defined procedure. With the introduction of such internal reporting procedures, management ensures that it is aware of all information relating to compliance, in particular the conduct of employees who are not in compliance with the law or internal rules of conduct.
Whistle-blowing and Ethics

The Greek system does not have an extensive legislative framework regulating whistle-blowing. However, Greek companies incorporate best practices to prevent corruption, money laundering and market abuse.

Law 4254/2014 in section IE includes provisions related to the treatment of whistle-blowers who call attention to behaviors that lead to corruption in the private and public sectors, as well as protections for those who reveal acts of corruption.

Furthermore, corporations introduce internal policies that supplement the provisions of the employees’ private agreements and provide whistle-blowing processes and protections.

Definition and anonymity

The Greek legal framework does not contain a single definition of the term whistle-blower. In most cases, whistle-blowers are considered persons bound by an employment relationship with a target entity and therefore facing the risk of being exposed to threats or hostile actions – in particular, adverse or discriminatory employment actions. Furthermore, Article 39 of Law 4443/2016, which incorporated Regulation (EU) 596/2014 on market abuse, gives the Greek Capital Market Commission authority to protect people working under a contract of employment who report infringements of such activities are protected from hostile action – in particular, adverse or discriminatory employment actions.

In addition, Law 3789/1957 introduced the framework of establishing employees’ internal regulations for companies employing more than 70 people. It provides that an internal regulation may include provisions on discipline for misconduct and a process to protect those reporting misconduct against threats and hostile actions, including termination of employment.

In addition, an employer’s internal regulation may provide for the anonymity and protection of the whistle-blower in cases where the violation justifies the right of the employer not to immediately expose the data of the employee who reported the incident.

Protections

The competent authorities have the right to introduce measures of protection for whistle-blowers against any hostile acts, specifically those involving unfair treatment, discriminatory employment actions or termination.

In the Greek labor framework, general Article 281 of the Greek civil law holds that any termination that is an act of retaliation by the employer is abusive and, thus, null and void.

Despite the fact that whistle-blowing procedures are not contained in an organized legal framework, it is obvious that Greece is moving in that direction, given its effort to show zero tolerance for corruption.
A strict whistle-blowing regulation

Whistle-blowing processes have been regulated in Hungary since Act CLXV of 2013, on complaints and reports of public interest (also called the Whistleblowing Act), came into effect. Whistle-blowing systems may be used by employees and any person in a contractual relationship with the employer who has reasonable interest to make a report or to remediate the behavior subject to the report. Reasonable interest must be decided on a case-by-case basis.

Any violation of the policy of the employer, public or private, may be reported. Reports may be submitted anonymously, but the employer may choose to ignore an anonymous one. In any case, there is no obligation to collect any data about the whistle-blower.

In Hungary, the whistle-blowing system must be designed in a way that only those who are in charge of investigating the reported case may know the identity of the whistle-blower. The report must be kept secret (except for the notification of the subject of the report) until the end of the investigation or until the subject of the report is held liable. The subject has the right to explain his or her statements regarding the report and to offer evidence. Reports must be investigated by the employer or a third-party service provider. At the beginning of the investigation, the whistle-blower must be informed of his or her rights under the applicable data-protection regulations. The whistle-blower must also be informed of the result of the investigation, any measure taken by the employer, the consequences (in case the report was made in bad faith), the rules of the investigation procedure and that his or her identity will be treated confidentially.

Any entity implementing a whistle-blowing system must register in the data-protection registry of the Data Protection Agency (DPA). Personal data may only be processed after the registration.

As there is a growing tendency to engage third-party data-protection officers, it is advisable for companies to consider engaging a whistle-blower-protection attorney to investigate reported cases. It may considerably increase employees’ trust in the whistle-blowing system, as serious independency rules apply to whistle-blower attorneys.

Compliance challenges

In practice, we saw several companies operating policies that include certain whistle-blowing mechanisms that may not be in full harmony with the Whistleblowing Act. There were also questions about whether previously appropriate whistle-blowing policies are fully compliant and functional after the entry into force of a number of new or amended laws (e.g., the Civil Code, the General Data Protection Regulation and the Information Act). As the Whistleblowing Act prescribes various data-privacy obligations (publication of data privacy notice, prohibition of processing special categories of data, immediate deletion of unnecessary data, etc.) and data-security expectations (personal data of whistle-blowers, employees and persons affected in investigation procedure must be safeguarded) – such provisions coupled with the increased scope of duties stemming from the GDPR may mean a serious compliance challenge for those operation whistle-blowing schemes. The issue is one not to be underestimated: the lack or compromise of such protections may not only undermine the lawfulness of the measures taken (e.g., sanctions against the employees) and the lawful operation of the whistle-blowing system; it may also quickly erode the reputation of a company, should the whistle-blowing matter become publicized and receive bad publicity. It is highly advisable to use integrated solutions and a holistic approach to tackle these risks, achieve compliance and protect business interests at the same time.
Whistle-blowing and Ethics

As organizations in India grow larger, management and employee fraud, corruption and similar problems have also seen a rise. This has become a major concern for organizations, as many of these cases are not reported due to fear of retaliation. Therefore, it has become essential for employers to have a mechanism in place that encourages and protects employees who report wrongdoing within the organization. A person who raises concerns and reveals information about such cases is a “whistle-blower.” Whistle-blowers may make their allegations internally (to other people within the organization) or externally (to regulators, law enforcement agencies, media, etc.).

Legislative framework

The law on whistle-blowing in the Indian public sector is primarily covered under the Whistle Blowers Protection Act, 2014, which details a process for receiving complaints relating to allegations of corruption or willful misuse of power against a public servant. For corporate entities, whistle-blowing is governed by internal reporting mechanisms. The Securities and Exchange Board of India Regulations, 2015, make it mandatory for listed companies to devise an effective whistle-blower process that enables stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices. Listed companies are also required to make proper disclosures in their annual reports and upload information about their whistle-blower policies on their websites. The Companies Act 2013 goes further, extending the scope of whistle-blowing protection requirements to companies that accept deposits from the public and those that have borrowed money, exceeding INR50 million, from banks and public financial institutions. The current legislative framework on whistle-blowing largely covers wrongdoings in the public sector, but it does not adequately protect the private sector. Private-sector players mostly rely on their internal policies for dealing with cases of whistle-blowing.

Anonymity of whistle-blowers

Under the Whistle Blowers Protection Act, the identity of the whistle-blower is required to be disclosed to the appropriate authorities. If the identity is not disclosed, no action is taken. However, when the whistle-blower’s identity is disclosed, the authorities are obligated to protect his or her identity as well as documents or other information produced by the complainant. Certain discretionary powers have been granted to the authorities, who can decide whether to disclose the whistle-blower’s information. The Companies Act and the Securities and Exchange Board of India Regulations do not state whether the identity of whistle-blowers should be kept confidential. Accordingly, there are holes in the law that must be addressed. In some cases, the disclosure of a whistle-blower’s identity has had fatal consequences.

Protections afforded to whistle-blowers

The extant framework provides a few safeguards for whistle-blowers. The Act supports concealment of a whistle-blower’s identity and prescribes a penalty (imprisonment up to three years and a fine up to INR 50,000) should there be a negligent or bad-faith disclosure. Further, the whistle-blower has the right to file an application for redress before the authorities if he or she is being retaliated against, or likely to be. The act extends such protection even to witness and other persons who are part of the inquiry on any complaint made under the act.

Whistle-blowers in the private sector may be protected by safeguards devised by the vigilance mechanism under the Companies Act or the other regulations. Private-sector organizations usually create their own internal whistle-blower policies that encourage whistle-blowing, including robust tools to detect and prevent retaliation against whistle-blowers. All companies should articulate policies on whistle-blowing and ensure strict compliance as an effective tool to expose cases of fraud and mismanagement within the organization.

1The act has not yet gone into effect at the time of this publication.
A general perspective
Whistle-blowing has been widely recognized as playing a crucial role in the fight against fraud, corruption, mismanagement, and other crimes in the workplace. Italy has implemented whistle-blowing laws in the public and private sectors, however, they are far from being real instruments to detect crimes. The reasons for such poor results, especially in the workplace, include the lack of clear and effective protection mechanisms for the whistle-blower.

Italian regulation
Whistle-blowing is ruled by Law no. 190/2012, with reference to the public sector, and more recently by Law no. 179/2017, which amends the provisions set forth by Legislative Decree no. 231/2001 for the private sector and earlier public-sector provisions.

Both regulations aim to protect employees and collaborators who anonymously report offenses or acknowledge unlawful conduct of which they became aware due to their position or in the context of their employment relationship.

In particular, with reference to the public sector, Law no. 179/2017 provides that “the public employee who reports, in the interest of the public administration’s integrity, to the Anti-Bribery and Transparency Officer, to the National Anti-Corruption Authority (ANAC), to judicial or accounting authorities, wrongdoing he became aware of by reason of employment shall not be sanctioned, demoted, fired, transferred or subject to other organizational measures having negative effects, direct or indirect, on work conditions due to the report.” Moreover, confirming the previous regulation, the law establishes that the whistle-blower’s identity must not be revealed, discriminatory and retaliatory measures against the whistle-blower are prohibited, and that there is a reversal of the burden of proof. The law also introduces administrative pecuniary sanctions in cases where the whistle-blower’s protections were violated.

With reference to the private sector, the law provides that a mandatory reporting system for the protection of whistle-blowers must be included in a company’s organizational model and consist of one or more channels that allow employees to report relevant unlawful conduct or compliance violations, with precise and consistent evidence. In order to protect the whistle-blower, the company has to adopt measures aimed to ensure the confidentiality of the reporter’s identity and provide “an alternative channel” for whistle-blowing, along with disciplinary sanctions against “anyone who violates measures in place to protect whistleblowers” and “anyone who performs, with intent or gross negligence, groundless reports” or carries out retaliatory or discriminatory acts against the whistle-blower for any reason, directly or indirectly.

Company guidelines
Companies, even if they belong to international groups, must update and integrate the compliance programs already adopted pursuant to Legislative Decree no. 231/2001, with the reporting system set forth by Law no. 179/2017. They must define specific training programs on reporting (content, limits and methodologies). In the case of reporting, companies must verify and ensure that the personal data of both the reporter and the accused party are processed in compliance with the privacy legal framework set forth by the Italian Privacy Code (Legislative Decree no. 196/2003) and by the General Data Protection Regulation no. 2016/679 (GDPR).
Overview of the Whistle-blower Protection Act

Introduction
In Japan, the Whistleblower Protection Act provides protection for whistle-blowers within a company. The act took effect in April 2006, after several court cases involving internal whistle-blowers uncovered significant misconduct by businesses.

What is protection?
When a whistle-blower satisfies all requirements set forth under the act, then he or she is protected from a dismissal or any other disadvantageous treatment taken by the employer based on the fact that he or she is whistle-blowing. The act, however, does not have any administrative or criminal penalties if the employer violates it by taking a prohibited retaliatory measure against a whistle-blower.

Who can be a whistle-blower protected under the Act?
A whistle-blower must be a worker who falls within the definition of “worker” under the Labor Standards Act. A whistle-blower is not qualified if he or she is seeking a “wrongful gain,” is causing damages to others or has any other wrongful purpose as defined by the act.

Whose conduct is reportable?
A company’s conduct can be reported by a whistle-blower who is:
› An employee of the company.
› A worker dispatched to the company
› An employee of a service provider to the company
The conduct of the company itself is not only reportable. The act states that the company’s officers, its employees and other persons who are engaged in the company’s business are also reportable (such as an embezzlement by an employee of accounting division).

Is any improper conduct reportable?
The reported conduct must be:
› A criminal act under laws listed in the Act.
› Or a fact constituting grounds for an administrative disposition pursuant to laws listed in the Act (the, incompliance of which will results in a criminal penalty).

As of 15 June 2018, the act lists 467 laws as the basis of reportable conduct, which should cover almost all aspects of business activities. Conduct is reportable after it occurred, when it is occurring or when it is about to occur.

Can whistle-blowing be reported to anyone?
The act cites three possible recipients of a report from a whistle-blower. The first is the whistle-blower’s employer, a company to which the whistle-blower is dispatched, or a company to which the whistle-blower is providing services. The second is a competent administrative organ with the authority to impose disposition or recommendation, etc., against the reported conduct. Third, it is any person to whom the whistle-blowing is considered necessary to prevent the occurrence of the reported conduct or the spread of damage caused by the reported conduct (e.g., via the press or other media). There is no prioritized order among the three recipients, which means that a whistle-blower can go to the media without going to an employer first (but please see below).

Must reported conduct be true?
When a whistle-blowing is made to an employer, the whistle-blower is protected as long as he or she considers the reported conduct to have indeed occurred, is occurring or is about to occur. When it is made to an administrative organ, the whistle-blower must have reasonable grounds. When it is made to other recipients, there is an additional requirement for this type of disclosure, such as a risk of evidence suppression.
Whistle-blowing mechanism

The legal framework
On 11 October 2018, the Saeima (the parliament of the Republic of Latvia) in the final reading supported the Whistleblowing Law with the aim of strengthening whistle-blower protection and promoting whistle-blowing on various violations that can harm the public interest. The law defines a whistleblower, instructs on how to report (spread alarm) and stipulates the basic requirements for processing the whistleblower’s report.

The law, which will come into force on 1 May 2019, defines a whistle-blower as a person who provides information on possible infringement that can undermine public interest, if the person has grounds to believe that this infringement is taking place, is planned or has occurred.

The whistleblower will be able to spread alarm about possible offenses, misdemeanors or other violations of legal, ethical or professional norms regardless of where they have occurred. The law also defines the areas where it is particularly important to spread alarm in the public interest, including, but not limited to, inactivity, negligence or abuse of authority by a public official, corruption, tax evasion, public health, human rights and competition law.

The whistleblower will be able to spread alarm in two ways — internally (at the workplace) or externally (to the competent authority). The law also stipulates the cases where the alarm can be spread by publicly disclosing the information. The whistleblower can spread alarm through the Whistleblowers Contact Point, associations and foundations, trade unions or their associations.

The Whistleblowers Contact Point will be established in the State Chancellery on 1 May 2019. It will ensure that sufficient information and support for whistle-blowers, as well as methodological support for putting the whistle-blowing mechanism into practice, are accessible in one place.

In Latvia, work on the whistle-blowing mechanism started in 2014. Generally, there was no tradition nor specific legal framework on whistle-blowing in Latvia. The existing legal framework that could be applied in whistle-blowing cases was fragmented in terms of material and personal scope. The duty for persons to spread alarm was attributable only to severe criminal offenses, whereas only specific groups of persons (officials) had the duty to report accidents in the economic sectors, unusual and suspicious financial transactions, possibility of an official entering into a conflict of interest or an existence of a conflict of interest, as well as on the suspicion of the legality of a task given by the higher officer. The absence of a special legal framework served as a serious obstacle for persons to spread alarm and to protect whistle-blowers from negative consequences. Only general legal protection mechanisms were available to whistle-blowers, e.g., a prohibition to create adverse effects to an employee (general provisions of the Labor Law of the Republic of Latvia), and a restriction of disclosure of the submitter’s identity without his or her consent (provisions of the Law on Submissions of the Republic of Latvia).
Whistle-blowing and Ethics law

Introduction in 2011
In Luxembourg, whistle-blowing was formally enacted on 13 February 2011, strengthening the means to fight corruption. This legislation is not dedicated solely to whistle-blowing protection but includes provisions on the fight against corruption offenses and criminal procedural rules.

However, this law does not precisely define whistle-blowing and whistle-blower. The law added a section to the Labor Code on the protection of employees against corruption, influence and the misuse of privileged information.

Employees who report a colleague’s misconduct to the employer or wrongdoing by the company to the competent authorities may face retaliation up to a dismissal. However, according to this law, an employer cannot retaliate against the person who has filed a complaint or informed the employer of wrongdoing. Assuming that an employee is the victim of an adverse reaction by its employer, the employer bears the burden of proof to justify that this adverse reaction is factually justified.

Protection against dismissal
An employee cannot be a victim of retaliation because of his/her protests or refusal to a fact that he/she considers, in good faith, as being constitutive of illegal interests, corruption or influence, and that is committed by his/her employer or any other senior in rank, colleagues or external people connected to the employer (article L.271-1(2) of the Luxembourg Labor Code).

Any termination of the employment contract because of whistle-blowing is therefore null and void and may lead to re-hiring within the company. The dismissed whistle-blower can alternatively claim for damages for abusive dismissal.

Can the whistle-blower be anonymous?
In Luxembourg, the data protection agency issued recommendations on whistle-blowing based on the WP29 guidelines and discourages anonymous denunciations to better protect the authors of the alarms.

Best practices in the financial sector
In December 2012, the Luxembourg Financial Sector Supervisory (CSSF) issued a Circular 12/5526 applicable from 1 July 2013 amending the corporate governance practices.

One of the key requirements of the circular is the implementation of a whistle-blowing procedure that must offer the opportunity for any staff member to raise important and legitimate concerns on risks and governance issues outside the hierarchical reporting lines, up to the board of directors.

The whistle-blowing procedure shall protect the confidentiality of the whistle-blowers and reports should be made in good faith and should not be exposed to any sanction, backlash or detrimental consequence. Therefore, companies regulated by the CSSF must comply with the circular and its standards regarding whistle-blowing.

Other companies have no obligation but should implement an ethics policy, including whistle-blowing rules based on current Luxembourg regulations.
Mexican whistle-blowing legislation: a work in progress

General legal framework
The current Mexican regulation on whistle-blowing has made substantial advances over the last few years, but it is still very limited.
Most of the legal development has been for the public sector.
In general, the brand-new anti-corruption legislation introduces the responsibility of private corporations engaged by the Mexican government, as well as the concept of whistle-blowing.
Along with the anti-corruption laws, Mexico has passed some amendments to the Federal Criminal Code to introduce corporate criminal liability, which forces companies, among others, to have in place a comprehensive compliance program in which an effective whistle-blowing mechanism is implemented.
As a complement to the ongoing legislation, the newly revised United States-Mexico-Canada Agreement (USMCA) includes substantial regulation on anti-corruption measures and, consequently, on whistle-blowing.
In fact, the USMCA expressly notes that state parties “shall adopt or maintain measures ... to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offenses.”

Considering the current legal framework and the provisions of the USMCA, it is expected that ancillary legislation will be discussed by the Mexican Congress in the upcoming months.
Finally, there is a bill aimed to regulate whistle-blowing within the public sector.
Such proposed legislation follows the path of the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.
In the event that such a bill is passed, it will certainly provide guidance to produce additional legislation related to the private sector.

Labor regulations
The Act on Responsibility of Collective From a labor standpoint, the Federal Labor Law (FLL) does not offer specific regulations on whistle-blowing.
There are no significant cases in which whistle-blowing has been under scrutiny, mainly because of the protective spirit of the labor law system.
Since “employment at will” is not a valid form in Mexico, whistle-blower employees are to some extent protected in the event of retaliation or termination of employment.

Per the statute, all employment termination must be subject to just cause. Failure to ground the termination on the limited causes set forth in the FLL will lead the employee to claim for severance or reinstatement.

If the employer imposes a disciplinary sanction as a consequence of a whistle-blower situation, that sanction must comply with internal shop rules registered with the labor board and, in any case, it also can be challenged by the employee.

Pending agenda
In a nutshell, it seems that the FLL and relevant precedents somehow provide sufficient protection to whistle-blower employees against termination or retaliation.
Further actions, however, must be taken to comply with criminal legislation and the USMCA.
The path of such agenda will probably include enhancing employment-based protection rules, such as (i) providing legal assistance; (ii) shielding a whistle-blower’s identity; (iii) providing mandatory paid leave of absence and (iv) offering transfers to an alternative work location.
For employers, it is essential to start working on a criminal compliance protocol, including whistle-blowing provisions aimed to encourage reporting and rules for the process.
Finally, companies doing business in Mexico and abroad should continue observing the provisions set forth by the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act, along with the relevant extraterritorial-reach provisions.

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Whistle-blower protection

The Whistleblowers Authority Act (the Act) entered into force on 1 July 2016. It was established to ensure that abuses in the private and public sector would be investigated carefully. The Act makes recommendations and advises potential whistle-blowers. It is designed to protect whistle-blowers, and it applies to employers, employees, interns and self-employed workers.

The Act provides an extensive definition of the suspicion of abuse. In short, the suspicion must be based on a reasonable ground, which is the result of self-acquired knowledge. The Act provides a list of situations in which an abuse puts the public interest at stake. These situations involve cases of the following:

- A breach of statutory regulations
- A risk to public health
- A risk to public safety
- A risk to the environment
- A risk to the functioning of public services

Finally, there has to be a pattern, or the abuse has to occur on a structural basis.

Definitions

A whistle-blower is someone who reports any suspicion of abuse(s). In principle, whistle-blowers can determine whether they want to stay anonymous when the report of any suspicion of abuse is made. Pursuant to the Act, the employer is obligated to have a whistle-blowers scheme in place if the employer has at least 50 employees. The whistle-blowers scheme must treat any report with the utmost confidentiality if the employee requests. However, often the anonymity of the whistle-blower will be lost when an investigation is initiated.

Protections

Section 7:658c of the Dutch Civil Code holds that an employee may not be treated unfairly for having properly reported in good faith any suspected abuse. An employee can invoke this protection if:

- The suspicion of an abuse is based on reasonable grounds
- The report is done in good faith and
- The employee has acted prudently both on procedure and substance

Procedures

In principle, the whistle-blower is obligated to report the suspicion of abuse internally. The whistle-blower should report to the designated officer, as mentioned in the whistle-blowers scheme (if there is one). When there is no designated officer, the whistle-blower should report to a supervisor or a confidential adviser.
Whistle-blower laws

The Protected Disclosures Act 2000 (PDA) and the Privacy Act 1993 (Privacy Act) govern whistle-blowing in New Zealand.

The PDA allows information about serious wrongdoing to be disclosed by an employee of an organization (employee includes former employees, contractors, directors, secondees and volunteers).

For a disclosure to be protected, the whistle-blower must have reasonable grounds to believe that the information is true or likely to be true, must have made the disclosure so that the serious wrongdoing can be investigated, and the whistle-blower must wish to be protected.

“Serious wrongdoing” can include:

- An unlawful, corrupt or irregular use of funds or resources
- Acts, omissions or conduct that constitute a serious risk to public health, safety or the environment
- Acts, omissions or conduct that constitute a serious risk to the maintenance of law
- Criminal offenses

Disclosures

Protected disclosures must be made in accordance with an organization’s internal whistle-blowing procedure. Public sector organizations are required to have these internal procedures.

If an organization has no internal procedure, disclosures can often be made to the head of the entity. Whistle-blowers may also make a disclosure to the head of the entity if they reasonably believe that the usual recipient of the complaint is involved in or associated with the serious wrongdoing.

Further escalation to an “appropriate authority” is available if the whistle-blower reasonably believes that the head of the entity is involved in the wrongdoing or if there has been no action or recommended action regarding the disclosure within 20 working days.

Anonymity

Anonymous disclosures are not prohibited, but if a disclosure is made anonymously, it may be more difficult to determine whether the PDA applies (e.g., determining whether the whistle-blower is an employee and whether the disclosure is made in good faith), and it may be more difficult to investigate the allegation. Organizations can set their own internal procedures to manage anonymous disclosures.

Organizations are expected to keep the identity of a whistle-blower confidential unless an exception applies (e.g., if disclosure of the identity is essential to the effective investigation of the allegations, to prevent serious risk to public health or safety or the environment, or to comply with the principles of natural justice). The Privacy Act also supports the protection of the confidentiality of a whistle-blower’s information.

Protection

The PDA prevents any civil, criminal or disciplinary proceedings or other retaliation from being taken against a person for making a protected disclosure or referring one to an appropriate authority. If employees suffer retaliation, they may bring a personal grievance or a claim under the Human Rights Act 1993.

Once a whistle-blowing complaint is made, the organization must quickly and thoroughly analyze the facts and circumstances to determine both the scope of the investigation and who is best placed to conduct the inquiry.

Complaints of a less serious nature may be managed by an internal decision-maker, but more serious complaints are likely to require an external investigator, especially if senior employees are implicated or there is public interest.

An independent ombudsman service is available to assist individuals in making a protected disclosure under the PDA.
Whistle-blowing and Ethics

The Norwegian Working Environment Act

In Norway, whistle-blowing and ethics are regulated in the Norwegian Working Environment Act (WEA), chapter 2A.

The regulation came into force on 1 July 2017, and requires all companies that regularly employ five or more employees to have a whistle-blowing policy.

Whistle-blowing policy

A whistle-blowing policy must comply with some minimum requirements, including:

- An encouragement to report critical circumstances in the company
- Procedures for how a notification can be submitted and to whom
- Procedures for receipt, processing and follow-up of the notification

In addition, the policy shall be prepared by the employer in cooperation with the employees and their elected representatives, and shall be easily accessible to all employees in the company.

Notification

All employees have a right to report censurable conditions at the employer’s undertaking, including activity that is deemed illegal, unethical or incorrect within the organization. The right also applies for workers hired from temporary work agencies.

In some cases, the employees are also obligated to notify. This is the case if the employee becomes aware of harassment or discrimination at the workplace.

When making a notification, the employee shall proceed responsibly, reasonably and properly. Furthermore, the employee shall do what is reasonable to present the correct facts. The employee shall also notify in a way that is not harassing to an individual or destructive to the working environment. In practice, this requires the employer to have a scheme, a specific whistle-blowing email or another safe channel that safeguards these notifications.

Protection of whistle-blowers

According to the regulation, retaliation against an employee who notifies concerning censurable conditions at the company is prohibited. The employer has to do a proper due diligence of the notification sent in by the employee and not question the validity of the notification.

An employee who has been subjected to retaliation from the employer or others may claim compensation without regard to the fault of the employer or hirer. The compensation shall be fixed at the amount the Norwegian court deems reasonable in view of the circumstances of the parties and other facts of the case.

The protection of whistle-blowers is strengthened with regards to notification to public authorities. Therefore, when a supervisory authority or other public authorities receive notification concerning censurable conditions, only the persons working with the relevant case have access to the whistle-blower’s name or other information identifying the whistle-blower.

Anonymous whistle-blowers

The regulation does not regulate an employee’s right to notify anonymously. However, several companies have regulated routines for anonymous whistle-blowing in their whistle-blowing policies.
Reporting unethical behaviors in the workplace

Whistle-blowing in Peru

According to Peruvian law, a whistle-blower is an employee who reports conduct that is against ethical principles. Whistle-blowers believe it is necessary to intervene in order to protect the integrity of the workplace or organization.

To be considered a whistle-blower, an employee has to denounce, in detail, the unethical conduct that occurred. The most common situations that are considered unethical and could be reported by employees are the following: divulging confidential information, acts of unfair competition that are detrimental to the employer and sexual harassment.

Regulation

In Peru, the procedures to report unethical situations are usually established in the company’s rules. Internal regulations (codes of conduct, labor contracts, agreements, etc.) contain procedures for employees to report conduct and state the rights and guarantees for whistle-blowers and other witnesses.

It is recommended that businesses establish standards of conduct for employees and document them.

Guarantees and obligations for whistle-blowers

Internal regulations established by a company must contain procedures to denounce unethical behaviors and to protect whistle-blowers. The most important guarantee for them is confidentiality, especially during the reporting process.

To protect the personal data of the whistle-blower – depending on an employer’s size – the company could implement a confidential phone line or mailbox in the workplace. In those cases, the information provided could be anonymous or not; it is up to the employee to make that decision.

For sexual harassment cases, it is common in Peru to manage a personal interview with the victim, usually by someone from the Human Resources department. Witnesses in sexual harassment situations are always protected, according to Supreme Decree No. 010-2003-MIMDES. Additionally, whistle-blowers are obliged to present evidence, declarations and any other information that may help the company to determine responsibility for unethical conduct.

The evidence presented by the victim or the whistle-blower will support the investigation procedure by the company.

Penalties

Peruvian legislation establishes penalties for employees who commit unethical acts, either against other workers or against the company.

According to labor legislation, breach of confidentiality, unfair competition and sexual harassment are all considered as causes for dismissal.

The conduct, reported by whistle-blowers, could also empower victims and the company to start a trial against the responsible party to claim compensation for damages caused.
Status of whistle-blowers

Current regulations
At the moment in Poland, there are no commonly binding regulations specifically addressing the status of whistle-blowers or granting them special legal protection. With a few exceptions that relate to either a particular sector or specifically protected goods, whistle-blowers may only benefit from the protection against discrimination in employment or in termination of employment contract, based on general rules. Examples of specific protection are cases involving health and safety regulations: health and safety employees cannot be treated unfavorably for reasons attributable to their activity. Only employers from the financial sector are legally obliged to have internal procedures on employees who are whistle-blowers. Two pending government projects refer to whistle-blowers: the Act on Responsibility of Collective Entities for Acts Prohibited Under Penalty and the Act on Transparency of Public Life.

Definition of whistle-blower
The Act on Responsibility of Collective Entities defines a whistle-blower as an employee, member of the management board or person acting on behalf or in the interest of the entity that allegedly violates the law. Such a person would have to offer information about illicit activities taking place at the entity that employs them or at which they collaborate (or of such organizational irregularities that may potentially result in violation of the law). A similar definition is proposed in the Act on Transparency (natural persons and entrepreneurs), except that the status of the whistle-blower would depend on cooperation with the judiciary and confirmation of such status by the prosecutor.

In the Act on Transparency, the whistle-blower may only report on certain offenses indicated in the act, whereas in the Act on the Responsibility of Collective Entities, the whistle-blower may report on all matters that are prohibited by law.

Whistle-blowers generally can’t be anonymous, because the notification of the illicit actions needs to be brought to either the employer or to the prosecutor.

Protection of whistle-blowers
Whistle-blowers will be protected from unfair and discriminatory treatment, in particular against dismissal or termination of the contract with the entity allegedly violating the law. The court may rule to provide them with compensation or reinstate them to work if they are subjected to such treatment.

Another difference in the status of the whistle-blower in the Act on Transparency is that it would be granted through a decision by the prosecutor. Only after receiving such a decision would the whistle-blower be protected from being laid off. This act also allows for the dismissal of the employee if the prosecutor agrees.

Whistle-blowers in practice
There is not yet any unified or established practice of dealing with whistle-blower complaints, as the acts dedicated to the protection of whistle-blowers are still the subject of legislative proceedings. But the Act on the Responsibility of Collective Entities is more likely to be implemented in the near future. That means the complaints of whistle-blowers would be dealt with through internal investigations by employers according to internal regulations.

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Whistle-blowing and Ethics

The Portuguese approach (or lack thereof)

Like other European countries, Portugal does not have a specific legal framework for the protection of whistle-blowers or any government agency to enforce it or to track claims. As such, whistle-blowing is not a common practice in the private sector, as reporting mechanisms are notoriously scarce, underdeveloped and poorly publicized. Some multinational companies have, however, adopted hotlines within their compliance departments and deliver corporate governance reports that include chapters on fraud prevention. But these are for internal compliance reasons and not to comply with Portuguese law.

Labor-wise, there are essentially three provisions that – directly or indirectly – foresee the protection of whistle-blowers.

Labor laws

Law 19/2008 establishes one of the few known legal provisions involving the protection of whistle-blowers. This law contains measures against corruption, including a general principle that protects public officials and employees of state-owned companies against potential retaliation as a result of their reporting of crimes.

Public officials are granted the right to (a) remain anonymous (except toward those responsible for the investigation) until the prosecution and (b) request for transfer after the prosecution. Workers in the private and jurisdictional sectors are not covered by Article 4 of this law.

In the Portuguese Labor Code, employees are only entitled to some protection under Article 129. This provision protects workers from unjustified treatment by their employers, particularly if they are exercising their rights, which also include the civil right-duty to report crimes, entitling the worker to the right to initiate court proceedings against the employer. However, the dismissal of whistle-blowers is not considered abusive per se, and it is up to the dismissed employees to demonstrate that their dismissal was due to the whistle-blowing.

Recently enacted Law 73/2017, regarding harassment in the workplace, sets out an increased protection of whistle-blowers in harassment cases. To enforce this law, the Authority for Working Conditions and the General Inspectorate of Finance provide their own electronic addresses for the receipt of complaints of harassment in the workplace, both in the private and public sectors, and provide information on their websites with the identification of harassment practices and measures to prevent, combat and respond to harassment.

Data protection issues

Due to the lack of specific legislation in Portugal, in 2009, the Portuguese Data Protection Authority (CNPD) issued a resolution focused on the data protection issues of internal whistle-blowing. Although this was issued under the national privacy law existing prior to the General Data Protection Regulation (Law 67/98, following Directive 95/46/EU), we believe the essential principles and guidelines remain valid. Under this resolution, anonymity is discouraged in favor of a regime of confidentiality as a means of safeguarding the risks of libelous reporting and discrimination, and the management and preliminary assessment of the complaints must be carried out by independent auditors.

This CNPD resolution could, in practical terms, pave the way for further implementation of whistle-blowing channels within companies, which should focus on preserving confidentiality; managing complaints by third-party providers; providing feedback on investigation outcomes to the whistle-blowers; and establishing anti-retaliation protection.
Whistle-blowing and Ethics
A brief overview

Laws related to whistle-blowing
There is no specific legislation on whistle-blowing in Russia. The closest the country has are its laws for anti-corruption, including the protection of victims, witnesses and other participants of judicial proceedings on criminal cases; personal data processing and security; and protections for journalists, along with other labor law protections.

General whistle-blowing mechanisms for the private sector can be found within the Anti-Corruption Law, which sets forth the following recommended list of measures:
- Appointment of divisions and officials responsible for the prevention of corruption and other offenses
- Cooperation with law enforcement authorities
- Development and implementation of standards and procedures aimed at ensuring company diligence
- Adoption of a code of ethics and employee conduct
- Prevention and resolution of conflicts of interests
- Prevention of unverified or unofficial accounts and the use of forged documents

However, the law does not include certain requirements regarding the content of these measures (e.g., the standards and procedures aimed at ensuring company diligence, a code of ethics and employee conduct) to be implemented in companies.

Whistle-blowers and protections
There is virtually no legal definition of a whistle-blower, nor are there defined protections for whistle-blowers, except for one specific provision in the Anti-Corruption Law, which states that civil servants or state officials who report on corruption violations will enjoy state protection. The protection is afforded in accordance with the general rules of granting protection to participants in criminal cases.

Corporate whistle-blowers are barely protected under the law. Amendments are expected to the Anti-Corruption Law, which introduce measures aimed at the protection of any individuals who report on corruption offenses to their employer’s representative, the prosecutor’s office or the police. However, such amendments have not yet been adopted in the form of a law.

Whistle-blower complaints
There are no special requirements for reporting inappropriate behavior or wrongdoing. However, if such alerts include information on corruption (e.g., bribery) and are intended to be submitted to state authorities, the following issues should be taken into account.

Under Russian law, bribery (a form of corruption) is a crime. A crime-incident report should be filed to the respective state authorities, verbally or in writing. A written crime-incident report must be signed by the witness.

A verbal crime-incident report also should be signed by the witness. The protocol for this includes providing information about the identity of the witness.

In turn, an anonymous crime incident report may not be considered as an excuse for initiating a criminal case.

Self-reporting
The offender’s voluntary disclosure of an offense to the authorities qualifies as an extenuating circumstance. For example, in the case of an administrative liability, the amount of the fine imposed for violation may be reduced. In the case of criminal liability, the bribe-giver may be released from criminal liability if he or she:
- Actively enabled the discovery or investigation of the crime
- Was blackmailed by the bribe-taker
- Voluntarily informed the authorities of the bribe-taking
Whistle-blowers

The protection of whistle-blowers was introduced in the Serbian legal system in 2014 when the Law on Protection of Whistleblowers came into force. This law sets forth the rights of whistle-blowers, the procedure of reporting and the obligations of public authorities related to whistle-blowing.

A whistle-blower is defined as an individual who discloses violations related to regulations, human rights, threats against life, public health and other issues. These issues must be related to the employer, an employment procedure, the use of services by the state and other bodies, holders of public authority or public services, business cooperation or ownership rights in a company.

The law gives a certain level of legal protection to whistle-blowers, and it extends to related persons (in case they suffer damage from retaliation against the whistleblower) and to persons falsely labeled as whistle-blowers.

The law prescribes that the person responsible for receiving the information has an obligation to conceal the identity of the whistle-blower in order to avoid any retaliation aimed toward him or her. Nevertheless, the identity of a whistle-blower could be disclosed to the relevant authorities in cases of vital importance.

Whistle-blowers have the right to compensation in case they suffer damage. The law recognizes three types of whistle-blowing:

1. Internal whistle-blowing (disclosing information to the employer). In this case the law prescribes an obligation for the employer to regulate the process of internal whistle-blowing procedures.

2. External whistle-blowing (disclosing information to the state authorities). A state authority is obliged to process the information reported within 15 days.

3. Public whistle-blowing (disclosing information via public media, the internet or any other means of public sharing).

The law recognizes three types of whistle-blowing: 1. Internal whistle-blowing (disclosing information to the employer). In this case the law prescribes an obligation for the employer to regulate the process of internal whistle-blowing procedures.

2. External whistle-blowing (disclosing information to the state authorities). A state authority is obliged to process the information reported within 15 days.

3. Public whistle-blowing (disclosing information via public media, the internet or any other means of public sharing).

The whistle-blower who has been the subject of a harmful action due to whistle-blowing has the right to court protection within six months from the day of becoming aware of the harmful action, or three years from the date when the harmful action was taken. Court proceedings in connection with whistle-blowing are urgent and move swiftly.

Only a year after the law came into force, the first court verdict was announced in favor of a whistleblower, the former director of Belgrade’s Institute for Emergency Medical Care, confirming a long-term reprisal toward him for disclosing criminal activity at the institute in connection with private burial companies. This verdict represents a historical step against the criminal network that exists within the state system.

On the other hand, despite the modern regulations prescribed by the law and nongovernmental organizations raising awareness about whistle-blowing, the practice has not reached a satisfactory level of protection of whistle-blowers, especially in internal affairs (in situations where employees disclose information about corruption within the company).

As the protection of whistle-blowers is still not sufficiently developed in Serbia, individuals rarely take steps toward whistle-blowing against their employers since they fear retaliation, manifested in discrimination in the workplace or even dismissal from work.
Whistle-blowing and Ethics

Legal framework
Whistle-blowing in Slovakia is governed by Act No. 307/2014 Coll. on Certain Measures Relating to Reporting of Anti-Social Activity and on Amendments and Supplements to Certain Laws (referred to as the Whistleblowing Act), effective 1 January 2015. It provides a legal framework for whistle-blowing in both private and public spheres and guarantees protection of the whistle-blower.

Who is a whistle-blower?
The Whistleblowing Act defines the whistle-blower as an individual who submits a bona fide notice with defined content to a relevant authority as well as his or her family member if they have the same employer.

The whistle-blower may seek protection, in accordance with the Whistleblowing Act, if the report contains information about serious illegal activities of which they become aware in connection with his or her employment. Reports may also be filed anonymously.

Legal protection of whistle-blowers
Whistle-blowers may request the authority's protection against potential retaliation from their employer when submitting a report, or at any time during the subsequent investigation. The authority verifies whether the individual fulfills the definition of a whistle-blower and then notifies the employer concerned. Upon delivery of such a notice to the employer, the whistle-blower is then considered a so-called protected whistle-blower. This means certain labor legislation applications to the whistle-blower are subject to prior approval by the competent Labor Inspectorate. This approval should be granted without undue delay or within 30 days in more complicated cases.

After the reported illegal activity has been taken into criminal or administrative proceedings, the whistle-blower may request a discretionary reward from the Ministry of Justice amounting to a maximum of 50 times the minimum wage (currently approximately €24,000).

Employers' duties
Employers with more than 50 employees and public bodies are obliged to introduce a “whistle-blowing mechanism,” including an internal reporting system and a contact person. The contact person can be an employee or a contractor.

Codes of ethics
Many employers in the private sector issue their own codes of ethics, either to comply with requirements imposed at a global level by their parent companies or to increase professional behavior standards. Codes of ethics shall be implemented in the same way as any other internal regulations issued by employers.

Industry-wide codes of ethics are common in certain occupations distinguished by greater professional independence. In the public sector, issuance of codes of ethics is regulated by specific laws.

Application
Despite the scope of protection under the Whistleblowing Act, it has not been used in recent major whistle-blowing cases, and employees generally adopt a rather cautious attitude toward whistle-blowing. Furthermore, it remains to be seen whether cases could descend into a “battle of forms” over the application of several codes of ethics in intracompany relations.
Whistle-blowing and Ethics

Traditionally, Sweden has maintained a relatively clear division between whistle-blowing in the public sector and in the private sector. Recently, however, the protection for whistle-blowers has been strengthened through the newly enacted Whistleblowing Act.

Public sector


These laws not only protect all citizens from government infringement of their free speech – they also specifically protect individuals employed within the public sector.

Whistle-blowing is therefore made possible through a variety of measures: a freedom to communicate information, a legal right to anonymity when publishing information and protection against reprisals.

Private sector

Employees in the private sector are not always afforded the same amount of protection in relation to their employer.

While employees in the private sector do have a right to criticize their employer, they also have a far-reaching duty of loyalty and confidentiality.

Because the fundamental laws previously mentioned only apply in relation to the government (and government agencies), private employers are granted a greater amount of discretion when dealing with whistle-blowing employees, so long as the provisions of the Employment Protection Act are taken into consideration.

The Whistleblowing Act

As of 1 January 2017, whistle-blowers are afforded a greater measure of protection under the so-called Whistleblowing Act (more formally known as the Act on special protection for workers against reprisals for whistleblowing concerning serious irregularities).

There were several reasons behind the enactment of the Whistleblowing Act. For one, research showed that employees often refrained from reporting misconduct or irregularities for fear of reprisals.

Furthermore, though whistle-blowers are partially protected through regulations on free speech, there has been no unified protective legislation on the subject.

While the Swedish Labour Court had long recognized the protection against reprisals for whistle-blowers through its case law, this is not necessarily something that was visible to the general public. The enactment of the Whistleblowing Act can therefore be seen both as a codification of this case law and an expression of a political will to reinforce the protection for whistle-blowers.

Despite this, the scope of the Whistleblowing Act is still fairly limited. As the title implies, it protects workers only against reprisals for whistle-blowing that concerns serious irregularities.

The phrase “serious irregularities” refers to offenses whose penalties may include imprisonment. The law – and its preparatory work – does not go into more detail than that. The definition of the term “reprisal” also remains fairly abstract.

Sanctions

Should an employer breach the Whistleblowing Act by enforcing reprisals, the employee is entitled to damages for the loss incurred and for any violations that such reprisal might entail.

If an employee believes he or she has been subjected to reprisals incompatible with the Whistleblowing Act, he or she can make a case for these circumstances. When this happens, the burden of proof falls on the employer to demonstrate that such reprisals have not occurred.

As of yet, there have been no cases tried under the Whistleblowing Act. While the protection for whistle-blowers has been strengthened, questions still remain as to the efficiency of this new law.
Whistle-blowing and Ethics

In the UK, whistle-blowers are afforded protections under both statute and common law. In 1999, the Public Interest Disclosure Act (PIDA) came into force, adding provisions into the Employment Rights Act 1996 that protected whistle-blowers against dismissal and discrimination.

The act of whistle-blowing involves the making of a “protected disclosure.” This is defined as any disclosure of information that, in the reasonable belief of the worker making the disclosure, tends to show one or more of a given set of factors, including, for example, that a criminal offense has been committed or a miscarriage of justice has occurred. For the whistle-blower to be protected, the disclosure must be made to one of a non-exhaustive list of people, which includes the whistle-blower’s employer, the person responsible for the relevant failure, government ministers and legal advisers.

PIDA provisions

PIDA protects both employees and workers who make such protected disclosures in the public interest. The meaning of “public interest” has been widely debated, and, in the case of Chesterton Global Ltd. v. Anor & Nurmohamed in 2017, was described as being a low-threshold criterion that may include groups of staff members rather than the general public exclusively. The protection extended to whistle-blowers by PIDA aims to prevent them from suffering detrimental actions or being dismissed as a result of making a protected disclosure.

Whistle-blowers may request anonymity when making a protected disclosure, but this may mean that the investigation cannot be taken further if sufficient information is not provided. In most cases, the recipient of the information must, on request, make every effort to protect the identity of the whistle-blower, but whistle-blowers who choose to make their disclosure to the press will generally forfeit their right to anonymity under PIDA. This anonymity is key in protecting the whistle-blower from any backlash related to making a protected disclosure, which may include unfair treatment in the workplace or unfair dismissal.

Significant protections

In theory, whistle-blowers are afforded significant protections under the law. The UK government aims to encourage accurate and pertinent whistle-blowing: the Financial Conduct Authority considered offering US-style incentives to whistle-blowers but eventually decided not to do so, judging that active encouragement of whistle-blowing by financial means would entail the risk of an increase in false or trivial claims.

If a whistle-blower suffers a detriment in their employment, they have a potential claim for detriment; if they are dismissed due to their whistle-blowing, they may bring a claim for unfair dismissal. However, if the whistle-blower is a worker rather than an employee, a claim for detriment is the only option available because the unfair dismissal is a claim that is only available to employees. As decided in the case of Kuzel v. Roche Product Ltd. in 2008, where dismissal was a result of the employee having made a protected disclosure, that dismissal is automatically unfair, and it is for the employer to prove that there was a fair reason for the dismissal.

In addition, claims for hurt feelings and for loss of earnings due to damage in reputation and a subsequent inability to find work in the same field at a similar level have often been successful, with damages, as awarded in the 2009 case of Watkinson v. Royal Cornwall Hospitals NHS Trust, potentially reaching over £1m.

Best practices

However, the law provides a minimum protection only, and one that should be augmented and fortified with best practice policies and procedures. Indeed, there is no positive obligation to encourage or promote whistle-blowing provided by statute. The only protections provided are those laid out above, which amount to more in the way of remedies than measures to facilitate improvements to the whistle-blowing process. Such measures must therefore be implemented before the fact by the conscientious employer.

Indeed, there are myriad reasons beyond the ethical for an employer to implement a whistle-blowing policy. These include, but are not limited to, preventing external disclosures, minimizing the risk of litigation, and avoiding criminal liabilities linked to the facilitation of illegal activity. All employers should therefore, as a matter of best practice, have a whistle-blowing policy that is separate from the company grievance policy, setting out the legal protections available to whistle-blowers and providing for a comprehensive and supportive whistle-blowing procedure. It will also be of utmost importance that the policy encompasses data protection issues. As a matter of good practice, the policy should be developed in consultation with staff and any relevant trade unions.

It is likely that the future of whistle-blowing policy in the UK will be shaped by an increased awareness of the emotional toll of blowing the whistle on those who do so, as well as by developments in technology that will facilitate reporting, investigations, and record-keeping. Also of note will be the interaction of whistle-blowing legislation and the General Data Protection Regulation.

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Our digital guide on labor and employment law challenges in business transformations

Available in a digital format, the guide focuses on matters of key strategic importance for multinational companies on a country-by-country basis.

As all multinational corporations know, workforce issues in transformational projects are a significant challenge. Each country has different labor and employment laws, and more than ever, companies now need to understand these laws to manage cost and risk, proactively identify possible hurdles, and facilitate efficient, timely and agile implementation of global or regional projects.

The guide covers 35 jurisdictions and offers multinationals corporation pragmatic insights into the issues they will face around the world in transforming their business, and helps them navigate through the process and mitigate potential risks.

Laws relating to issues such as workforce restructuring, HR legal mergers and acquisitions, HR post-merger integration and contingent workforce can be compared side-by-side thanks to the enhanced functional feature of the guide's digital platform.
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