Whistle-blowing
The pillar of sound corporate governance
Introduction

Changes in law and the need to implement global best practices in corporate governance have made organizations in India aware of the necessity of putting in place effective whistle-blowing mechanisms (vigil mechanisms) in their operations. Such a mechanism not only provides all the stakeholders of a business a platform on which they can report their genuine concerns, but also creates a veritable resource of information that helps its management identify various lapses in its processes. However, development of a fully compliant whistle-blowing mechanism that is efficient and effective can be a daunting task.

A robust and holistic whistle-blowing mechanism includes a policy framework, a dependable complaint-reporting platform, a well-structured and practical response plan, creation of awareness among its management and employees, and requires them to be trained in the requisite processes. An outsourced complaint-reporting platform is considered more effective due to its distinct advantages, e.g., its around the clock availability, multi-lingual capability, the independence and objectivity of the process, etc.

Keeping in mind the current corporate scenario, EY is pleased to announce an arrangement with InTouch India, a UK-based company that helps organizations set up and operationalize whistle-blowing channels. InTouch’s wide experience, effective systems and presence in India gives it an edge in the market. EY and InTouch aim to deliver seamless whistle-blowing-related services, including implementation and operation of the mechanism and advice on concerns reported, to enterprises.

Legal framework in India

The Companies Act 2013 has made it mandatory for certain classes of companies to establish vigil mechanisms for their directors and employees in order to report genuine concerns in the recommended manner. Clause 49 of the SEBI listing agreement also lays down similar provisions. Non-compliance with these regulations could lead to fines and penalties.
Case study

The concern

A leading manufacturing company had an internally run mechanism. Its reporting channels included a hotline (which only operated during office hours) and “post box access” to its Chairman to report complaints (only in English). Furthermore, whistle-blowers needed to disclose their complete contact details while registering complaints. Consequently, very few complaints were received and most of these were frivolous.

Solution

- Provide employees with a hotline facility which is operational 24/7/365. The hotline should offer multiple languages, considering the locations in which a company has operations.
- Consider providing additional channels like email and website.
- Allow anonymity, which will encourage employees to be forthcoming, without having fear of retaliation.
- Provide adequate awareness training to employees on matters that can be reported through the mechanism and which should not. This will help reduce the number of frivolous complaints.
- Consider outsourcing the whistle-blowing mechanism to a third party service provider.

The company’s top management, while putting in place appropriate whistle-blowing mechanisms, grappled with the following issues:

How to set up the mechanism?
- Deciding between outsourcing the mechanism or running it in-house

Which channel should be implemented?
- Whether this should be accessed through a hotline, email, web-site, postal address or fax

By whom the mechanism should be used – employees (permanent and contractual), vendors or various other stakeholders?

Monitoring and managing of genuine concerns – how a database of complaints received should be maintained?
- Initiation and monitoring of investigations
- Establishment of guidelines on what should be investigated and by whom

Spreading awareness
- Publishing material to increase employees’ awareness and conducting awareness training sessions

Implementation of global best practices
- Understanding and implementing these best practices

What other companies are doing?
The whistle-blowing quandary: India Inc.’s journey from oblivious to obvious

EY Fraud Investigation & Dispute Services recently conducted a whistle-blowing survey to evaluate its usage and popularity in India. It revealed the following:

- 22% of the respondents had implemented structured mechanisms in their organizations because they realized there was a pressing need for it.
- 75% of the respondents indicated that they have a formal fraud response plan in place, which details the steps to be taken when a complaint is received, however our experience indicates that these plans are fairly inadequate.
- 56% of the respondents indicated that less than 25% of complaints reported need further investigations. This indicates lack of training and awareness.
- 57% of the respondents had implemented hotlines in their operations. Despite organizations around the world agreeing that anonymous reporting hotlines are more likely to detect fraud.
- 32% of the respondents had outsourced their mechanisms to third party service providers. This showcases that a large number were unaware that appointing a third party service provider can be beneficial for them. e.g., multiple channels, 24/7 availability, multilingual capabilities, case-reporting software, etc.
- 13% of the respondents indicated that their whistle-blowing frameworks were fully compliant with the Companies Act, 2013.
EY’s experience

We have helped our clients with the following:

- Developing or reviewing their whistle-blowing policies and related procedures
- Strategizing training initiatives and developing content for face-to-face and web-based training sessions
- Developing or reviewing codes of conduct and related policies
- Conducting training sessions for their management teams and employees
- Formulating fraud-response plans
- Conducting “train the trainer” sessions
- Implementing whistle-blowing mechanisms (through third party service providers or by their in-house teams)
- Helping their management review and decide on the “way forward” for complaints received through whistle-blowing mechanisms

EY’s clients span across:

- A leading airline
- A leading global information technology company
- The finance arm of an automobile manufacturer
- A media and entertainment company
- A leading tour and travel operator
- A leading newspaper brand
- A pharmaceutical company
- A leading manufacturer of consumer electronics
InTouch: a background

InTouch has been a leading provider of independent whistle-blowing hotlines since 2002. It offers 24/7/365 multilingual, multi-channel reporting via its SpeakUp service.

SpeakUp alerts clients’ senior management about serious wrongdoing in their organizations, enables them to manage incidents internally and better protect their employees, stakeholders, operations and reputation. InTouch works with many of the world’s leading companies, helping them mitigate potential risks and protect themselves against financial loss and reputational damage.

InTouch is part of the Expolink Group. Established in 1995, Expolink is Europe’s leader in the whistle-blowing hotline market and the first company in Europe that provides whistle-blowing services to organizations. Together, InTouch and Expolink offer some of the most comprehensive and effective whistle-blowing programs available in the market today.

The formation of InTouch India is an important part of the group’s plans to focus on delivering a whistle-blowing service that is customized to the needs of companies headquartered in India and their global operations.

InTouch: clients and credentials

Expolink and InTouch’s whistle-blowing services cover 5 million employees, suppliers and third parties in over 190 countries. They have significant experience in addressing issues relating to infringement of European data privacy legislation. They handle round 10,000 confidential disclosures outsourced by organisations of all sizes and in all sectors, including many FTSE 100 and Fortune 500 companies, every year. Their specific focus areas include companies in the retail, manufacturing, food, communications, financial services, IT and energy sectors.

Expolink and InTouch’s clients include BAE Systems, BBC, Burberry, D B Corp, G4S, Jaguar Land Rover, Kingfisher, the Lloyds Banking Group, Ranbaxy, Royal Mail, Standard Chartered Bank, Tata Steel, Tesco and Vodafone.

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We can trust them to manage helpline calls in an expedient, confidential and secure manner and have shown great willingness and ability to be flexible and adaptable to meet our needs.

David Harris, Head of Business Conduct, BAE Systems

InTouch’s service offering

Individuals wanting to report a concern have the choice of doing so 24/7/365, principally by using a toll-free phone number or via a secure web portal, anonymously if they wish. Reporting by phone is the most popular choice with 53% of whistle-blowers preferring this mode; 45% prefer to make their reports via InTouch’s web portal. Reporting via email, by post and fax accounts for the remaining 2% of the reports received.

Total confidentiality is maintained on reports made on SpeakUp. The service is accredited by ISO27001, the international data management security standard.

In the UK, InTouch has its own service center and in India it facilitates high-quality call-handling services in a secure environment via its service partners in Bangalore.
InTouch’s centre in Bangalore takes calls in all major Indian languages and English. This means that problems relating to understanding different languages, often encountered by Indian callers who are routed to call centers outside of India, are avoided.

All of InTouch’s people are skilled in gathering information its clients need to appropriately evaluate concerns raised and undertake successful investigations.

Whistle-blowers using InTouch’s secure multilingual web reporting platform navigate the site and make reports in their preferred languages, guided by user-friendly on-screen prompts.

Clients can send their responses to the whistle-blowers or ask further questions via the InTouch Case Reporting System (CRS), even when whistle-blowers chose to remain anonymous. The CRS also provides clients 24/7 access to real-time management information.

InTouch’s total support package helps its clients to promote their SpeakUp programmes effectively.

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**Percentage of companies offering whistle-blowing hotlines to employees**

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>47%</td>
</tr>
<tr>
<td>2007</td>
<td>72%</td>
</tr>
<tr>
<td>2010</td>
<td>79%</td>
</tr>
<tr>
<td>2013</td>
<td>93%</td>
</tr>
</tbody>
</table>

*2013 UK & Continental European Survey conducted by the Institute of Business Ethics, UK*

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**Nature of complaints received through SpeakUp**

- HR: 43%
- Bullying/Harassment/ Discrimination: 24%
- Theft/ Fraud: 16%
- Health & Safety: 11%
- Operations: 5%
- Other: 4%
- HR: 43%

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## A 360 degree approach

**How EY and InTouch can help you**

<table>
<thead>
<tr>
<th>Your need</th>
<th>Challenges</th>
<th>Solution</th>
<th>Our help**</th>
</tr>
</thead>
</table>
| **Establishing a whistle-blowing mechanism** | • What is the right policy?  
• What is an appropriate mechanism?  
• Who should be the owner?  
• Should a whistle-blowing platform be outsourced?  
• How should reporting take place?  
• What are the protocols that can be implemented for escalation and response action?  
• What are the reporting protocols that can be implemented? | • Help provided in establishment of whistle-blowing mechanisms  
• Assistance in development of fraud response plan  
• Help in constitution of cross-functional committee  
• Advice on response action  
• Help in implementation of whistle-blowing channels along with InTouch | • Help in selection of the most suitable policy and mechanism  
• Assistance in development of fraud response plan  
• Help in constitution of cross-functional committee  
• Advice on response action  
• Help in implementation of whistle-blowing channels along with InTouch |
| **Dealing with complaints** | • What action should be initiated if a complaint is filed? | • Help in reviewing complaints and recommending response  
• Advice on effective response action, including its scope and timeline |  |
| **Spreading awareness** | • Help in preparation of roll-out strategy  
• Assistance in conceptualization and development of training content for one-on-one and web-based training  
• Delivery of training – either to train trainers or the target audience | • Conducting training and awareness sessions  
• Help in preparation of roll-out strategy  
• Assistance in conceptualization and development of training content for one-on-one and web-based training  
• Delivery of training – either to train trainers or the target audience |  |

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“We have received excellent advisory support from EY in establishing a connect with InTouch for our whistle-blower system. Owing to their effective aid, through established processes and expert support, our day-to-day operations run smoothly without any hitches.”

—a leading pharmaceutical company

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*Disclaimer - EY and InTouch will have separate contracts with the client and will have independent responsibility to the client for their respective work. They will not be jointly liable for each other’s work.

**It may not be possible to provide some of these solutions to all companies due to EY’s internal independence related restrictions. Therefore, the possibility of providing these solutions to an organization will be determined on a case-by-case basis.*
### Your need

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Solution</th>
<th>Our help</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reviewing existing policy or mechanism</td>
<td>Conducting diagnostic reviews (assessment and enhancement)</td>
<td>Understanding and reviewing existing policies and procedures</td>
</tr>
<tr>
<td>&gt; How do you ensure that your existing policy and mechanism is effective?</td>
<td></td>
<td>Reviewing data related to complaints received, and response action and remediation measures to be taken</td>
</tr>
<tr>
<td>&gt; How do you resolve challenges related to effective response action, including investigations, disciplinary action and remediation?</td>
<td></td>
<td>Identifying potential areas of improvement</td>
</tr>
<tr>
<td>&gt; How do you ensure that excessive time is not spent by the executives (managerial) team on such activities?</td>
<td></td>
<td>Recommending changes in line with industry practices and needs</td>
</tr>
<tr>
<td>&gt; How do you identify complaints that could be driven by a personal agenda or malafide intent?</td>
<td></td>
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</tr>
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</table>

### Reviewing declarations made by independent directors

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Solution</th>
<th>Our help</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; According to Schedule IV of the Companies Act, 2013, independent directors are required to:</td>
<td>Reviewing vigil mechanism to support independent directors</td>
<td>Reviewing reports made to audit committees, boards or regulatory bodies</td>
</tr>
<tr>
<td>&gt; Ascertain and ensure that a company has an adequate and functional whistle-blowing mechanism</td>
<td></td>
<td>Reviewing existing mechanism for the adequacy and functioning of the mechanism</td>
</tr>
<tr>
<td>&gt; Ensure that the interests of the employees using the mechanism are not prejudicially affected</td>
<td></td>
<td>Reviewing sample cases reported through the mechanism and action taken</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conducting surveys to assess whether employees feel victimized</td>
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<td></td>
<td></td>
<td>Conducting independent interviews of management and employees</td>
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<tr>
<td></td>
<td></td>
<td>Reviewing reports made during internal investigation</td>
</tr>
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"EY has a very good understanding of leading practices that need to be followed in setting up a mechanism and InTouch provides a very easy to implement and operate whistle-blowing platform which has made our mechanism a success."

- According to the head of group assurance of a leading newspaper company
The changing legal scenario in India and the corporate governance roadmap the country is adopting, necessitate the existence of an effective vigil mechanism. Such a mechanism also adds to the internal control framework of organizations.

This arrangement will help enterprises that are looking at setting up or revamping their whistle-blowing mechanisms gain easy access to seamless solutions.
EY’s offices

Ahmedabad
2nd floor, Shivalik Ishaan
Near C.N. Vidhyalaya
Ambawadi
Ahmedabad - 380 015
Tel: +91 79 6608 3800
Fax: +91 79 6608 3900

Bengaluru
12th & 13th floor
UB City, Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: +91 80 4027 5000
Fax: +91 80 2222 4112

Chandigarh
1st Floor, SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: +91 172 671 7800
Fax: +91 172 671 7888

Chennai
Tidel Park, 6th & 7th Floor
A Block (Module 601,701-702)
No.4, Rajiv Gandhi Salai,
Taramani Chennai - 600113
Tel: +91 44 6654 8100
Fax: +91 44 2254 0120

Hyderabad
Oval Office, 18, iLabs Centre
HiTech City, Madhapur
Hyderabad - 500081
Tel: +91 40 6736 2000
Fax: +91 40 6736 2200

Kochi
9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682304
Tel: +91 484 304 4000
Fax: +91 484 270 5393

Kolkata
22 Camac Street
3rd floor, Block C
Kolkata - 700 016
Tel: +91 33 6615 3400
Fax: +91 33 2281 7750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400028
Tel: +91 22 6192 0000
Fax: +91 22 6192 1000

NCR
Golf View Corporate Tower B
Near DLF Golf Course
Sector 42
Gurgaon - 122002
Tel: +91 124 464 4000
Fax: +91 124 464 4050

Pune
C-401, 4th floor
Panchshil Tech Park
Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: +91 20 6603 6000
Fax: +91 20 6601 5900

InTouch’s contacts

InTouch India Limited
Blythe Valley Innovation Centre
Blythe Valley Park
Solihull
B90 8AJ
United Kingdom

EY’s contacts

Arpinder Singh  Partner and National Leader  +91 22 6192 0160  arpinder.singh@in.ey.com
Sandeep Baldava  Partner  +91 40 6736 2121  sandeep.baldava@in.ey.com
Vivek Aggarwal  Partner  +91 12 4464 4551  vivek.aggarwal@in.ey.com
Mukul Shrivastava  Partner  +91 22 6192 2777  mukul.shrivastava@in.ey.com
Anurag Kashyap  Partner  +91 22 6192 0373  anurag.kashyap@in.ey.com
Anil Kona  Partner  +91 80 6727 3300  anil.kona@in.ey.com
Rajiv Joshi  Partner  +91 22 6192 1569  rajiv.joshi@in.ey.com
Yogen Vaidya  Partner  +91 22 6192 2264  yogen.vaidya@in.ey.com
Dinesh Moudgil  Partner  +91 22 6192 0584  dinesh.moudgil@in.ey.com
Jagdeep Singh  Partner  +91 20 6603 6119  jagdeep.singh@in.ey.com

InTouch’s contacts

John Wilson  Managing Director  +44 121 506 9133  jwilson@intouch-india.com
Gizelle Handy  Senior Account Manager  +44 121 506 9197  ghandy@intouch-mcs.co.uk
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