

**Deloitte.**

Setting up a whistleblowing  
program

10 Frequently Asked  
Questions



# Establishing a whistleblowing program

1

## What statutory mandates, in India or abroad, prompt the need for a whistle blower policy/mechanism?

In India, the Companies Act 2013 and the SEBI's revised corporate governance norms (Clause 49 of the Listing Agreement) for listed entities, require companies to establish a functional whistle blowing mechanism and ensure adequate protection to whistleblowers. Further, the Rules (chapter 12) under the Companies Act, 2013, state that every listed company and the companies belonging to the following class or classes (irrespective of whether the unlisted entity is a public or a private company) shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

1. Companies which accept deposits from the public; and
2. Companies which have borrowed money from banks and public financial institutions in excess of Rupees 50 crores

Subsidiaries of foreign companies in India (unlisted) are usually governed by the parent company's regulatory requirements that demand implementation of a whistleblowing mechanism across all subsidiaries. Internationally, the Sarbanes Oxley Act, 2002, requires all companies listed in the U.S. to have a whistle blowing system in place. In the UK, it is recommended that genuine concerns about illegal, unethical or dangerous practices should usually be raised internally in the first instance. A whistleblower mechanism can facilitate this and subsequently, the matter can be treated confidentially.

2

## What types of concerns can be reported through a Whistleblowing channel?

A well-designed whistleblowing system can encourage the reporting of certain types of issues and concerns, which can include, but are not limited to:

- Allegations of fraud, corruption, unethical behavior or misconduct
- Concerns regarding questionable business practices or plans
- Warnings about particular risk areas going unchecked
- Non-compliance observed – with regard to company policy or the law

The Deloitte India Fraud Survey, released in 2014, mentions 11 specific fraud risks that can be identified using a whistleblowing program.



3

### Can the nomenclature of a whistleblowing program make a significant difference to the impact it has on stakeholders?

Companies choose nomenclature based on how they would like to position the mechanism. While the objectives may remain the same, some companies have opted to substitute “Whistleblower” with ‘Ethics’ in an attempt to manage any negative perceptions that the term “Whistleblower” may have.

There are also instances where “hotline” is substituted with “helpline” to position the mechanism as two-way communication rather than just a channel to report.

We have seen all of the mentioned terminologies work effectively for companies. The key success factor being the communication and clarity around what the mechanism stands for.



4

### Should a whistleblowing program be extended to vendors, customers, business partners and third parties?

While many companies have focused on providing a whistleblower reporting system just for employees, issues of significant importance are often highlighted by external stakeholders such as vendors, suppliers, customers etc. It is important to encourage these other stakeholders to use the system to uncover issues such as those of collusion and employee led frauds being detected that involve customers and other third parties.

5

## Should anonymity of complaints be allowed in whistleblower programs?

Anonymity is a powerful tool in ensuring success of a whistleblower mechanism. In our experience, allowing anonymity helps build confidence among users to report concerns. However, to ensure that frivolous/ irrelevant issues are not reported via the whistleblowing program, companies can encourage/ insist users to provide specific and credible information that supports the complaint, such as – alleged perpetrators, location and type of incident, names of other personnel aware of the issue, specific evidences, amounts involved etc., Having a policy that reiterates this message, can help improve the effectiveness of anonymous complaints.

We have also observed that companies insisting on complainants disclosing their identity, either do not receive complaints, or start receiving anonymous complaints outside of the formal reporting channel. In these instances, it is difficult to track such complaints as they may be received by different individuals in the company and in many cases the company is forced on take cognizance of the more serious allegations and act on them.

It is therefore in the interest of the company to permit anonymous reporting and at the same time create awareness of what the responsibilities of a complainant may be in terms of providing information etc.

6

## Who should drive the whistleblower program in an organization?

In most large multinational companies, the entire whistleblower program is driven by the Compliance teams.

In India, these have been traditionally driven by Internal Audit or Human Resources. However, since the enactment of the Companies Act 2013 we have seen increased ownership by the Legal & Secretarial Function.

The Companies Act 2013 prescribes that this should be driven by the Audit Committee and Independent Directors, however, the day to day administration of the mechanism continues to be managed by senior personnel in the company. Any risk perceived by the Audit Committee or Independent Directors is mitigated by the provision of direct access to the Chairman of the Audit Committee to complainants.

# Acting on complaints

7

Is it necessary to report whistleblower complaints to the Audit Committee?

The number of complaints/ concerns reported through the whistleblowing mechanism and its status should to be reported to the Audit Committee members on a regular basis. This reporting should provide details such as, the nature and type of complaint, hierarchical levels of personnel involved, status of the investigation, its impact (financial or other loss) and corresponding action taken by the company.

8

If a whistleblower complaint is received on regulatory noncompliance, how should the regulatory team review the incident and be objective?

Independence and objectivity is paramount for any successful investigation. Therefore, any regulatory non-compliance, if reported, has to be investigated by an independent team in order to maintain objectivity of the investigation. The same would apply to any allegation of fraud reported that may involve any other business function or area.

9

How should complaints by ex-employees/ employees on notice period be handled?

Complaints received from ex-employees or employees on notice should be handled in a manner that is consistent with handling other complaints. It should be based on the severity of the case and the information provided.

We have observed that former employees are often more vocal in their complaints and provide more information without fear of retaliation. This also helps the company evaluate the impact of the complaint, in terms of financial or other losses incurred and gaps in anti-fraud controls that led to the situation.

10

How should organizations deal with false complaints?

In our experience, complaints that are not duly supported with facts and appear to be ambiguous are generally found to be false complaints. To discourage such complaints, organizations must build awareness amongst employees around the objective and purpose of using the whistleblower program. The communication to employees must also emphasize on providing specific and credible information that supports complaints. In the absence of such credible information, the company may not investigate the complaint.

# Contact Us

Deloitte Forensic in India provides whistleblowing services and support to organizations. Supported by other Deloitte member firms, we can provide multi-channel (email, website based, fax, phone lines, post etc) and multi-lingual (English and leading Indian languages) support to organizations in setting up their whistleblowing programs. Our ISO certified centres ensure confidentiality, privacy and compliance with global and global whistleblower legislations. Globally, we provide whistleblowing services to over 400 clients.

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