

## HKCGI Ethics, Bribery and Corruption Guidance Note (Thirteenth Issue) – Whistleblowing – the “Software” and the “Hardware” to thrive (Part 1)

### Introduction

The governance professional will know that anti-bribery and corruption concerns are fundamental in Hong Kong's current regulatory landscape to prevent potentially fraudulent activities<sup>1</sup>. It is also an environmental, social and governance (ESG) concern. Generally, corruption in an economy is an important indicator of ease of doing business, which Hong Kong, as an international financial centre, places significant importance on. This guidance note will focus on whistleblowing, a mechanism to help whistleblowers blow the whistle on bribery and corruption concerns. The ideas apply to whistleblowing concerning legal and regulatory breaches. We will discuss the 'software' and 'hardware' for whistleblowing to thrive. In the follow-up guidance note, we will discuss some developments relating to listed companies on whistleblowing.

### Definition of Whistleblowing

There is no universal definition of whistleblowing, but from the applied governance perspective, a working definition is that whistleblowing refers to the sounding of an alarm by an employee, director, or external person, aiming to reveal neglect or abuses within the organisation's activities or that of one of its business partners that threaten the public interest, the integrity and reputation of an enterprise<sup>2</sup>. This definition specifically includes the situation where an employee is concerned about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organisation's reputation<sup>3</sup>. From the risk governance perspective, there is a need to manage the legal and reputational risks associated with the underlying whistleblowing complaint.

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- 1 In terms of legislation, the governance professional will know that the Prevention of Bribery Ordinance (Cap. 201)<sup>1</sup> expressly prohibits public and private bribery, among its other provisions.
- 2 Business Principles for Countering Bribery: TI Guidance Document, Transparency International.
- 3 BSI: PAS 1998:2008 Whistleblowing Arrangements Code of Practice.

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## Review of the Institute's work

The Institute is a thought leader on whistleblowing. Back in 2007, conducted a survey and published a report on "Business Ethics: A Path to Success"<sup>4</sup>, which revealed interesting findings which remain relevant to date, namely:

- 94% of respondents indicated they have integrated business ethics into their company's goals, missions and strategies.
- 96% agreed that good business ethics is essential for a successful business.
- 91% agreed that a growing concern about business ethics exists in society.
- 83% indicated that "enhancement of corporate governance" is a main driver for ethically running a business.
- 51% have put a whistleblowing policy in place.
- 87% believe that a company must put a whistleblowing policy in place.

The survey report highlights that:

- Business ethics are integral to a company's internal controls and risk management system.
- Issuing a code of ethics and a whistleblowing policy are key tools in promoting business ethics and combating corporate malpractice, but they are not widely adopted.

- A code of ethics and a whistleblowing policy should be consolidated into a set of guidelines or best practices which, under the Listing Rules for Hong Kong, will be mandatory for listed companies to 'comply or explain'.
- The jurisdiction needs to enact legislation which provides whistleblowers with statutory protection against retaliation and victimisation.
- There is a need for staff ethics training and company directors' active participation.

## Whistleblowing toolkit

In January 2011, the Institute followed up on the survey and issued Guidance Note 11, "Whistleblowing Toolkit", the contents of which remain relevant and to which the governance professional should refer. The toolkit helps the directors, company secretaries, and compliance executives to set up and operate whistleblowing policies and relevant procedures in listed companies or corporates in Hong Kong for conforming to compliance requirements and combating corruption and maintain a high standard of corporate governance practice internationally compatible standard, not only because the implementation of whistleblowing policy can effectively help maintain good business ethics but also work effectively together with internal control and risk management<sup>5</sup>, especially in corruption risk in listed companies or corporates. Most importantly, the commitment to whistleblowing policy and practice in listed companies or corporations can support the development of a conducive corporate culture or risk-aware culture for internal control and risk management practices at an entity-wide level.

<sup>4</sup> Research paper titled "Business Ethics Report" of HKCGI (formerly known as Hong Kong Institute of Chartered Secretaries published in September 2007, <https://www.hkcg.org.hk/thought-leadership/publication-detail/2073>

<sup>5</sup> Section D.2, Appendix 14, Corporate Governance Code, Listing Rules

For organisations to effectively implement a whistleblowing mechanism, apart from policies set out under the Institute's toolkit, there are other soft and technical requirements which we will summarise in this guidance note to raise the awareness of the governance professional and to assist in the discharge of related advisory and implementation from the applied governance perspective.

## The "Software"

The governance professional should steer directors and senior management, along with those delegated to ethical tasks as ethical leaders, to understand the following prevalent themes concerning whistleblowing.

- **Speak-up culture.** An organisation should promote a speak-up culture as part of good governance. In an article titled, 'Whistleblowing Trend Watch'<sup>6</sup>, an international law firm describes the 'speak up' as a global trend, including under the EU Whistleblowing Directive. Also, Latin American and Asia Pacific countries are implementing compliance programs to govern various parts of business operations, such as the hiring process and discrimination and harassment in workplaces. There are thus regulatory expectations internationally.
- **Recognitions.** The board should give commendations and merits to role model employees who have consistently practised good corporate governance practices, including developing whistleblowing policies and best practices. Directors and top senior management should hold regular meetings with employees to address whistleblowing concerns, including complaints handling and no reprisals for complaints made in good faith.
- **Training.** The governance professional should facilitate training for directors, senior

management, and ethical leaders to become role models. The necessary soft skills should include training in effective communication, collaboration, conflict management, decision-making, and resilience under stress. These will lay the groundwork for an environment where employees can voice concerns about wrongdoings:

- **Communication.** The governance professional must support directors, senior management, and ethical leaders to articulate an organisation's ethical expectations through clear messaging. Explicitly sharing codes of conduct and ethical standards eliminates ambiguities and fosters a culture of honesty. Good communication also ensures that all understand the expectations of ethical behaviour and that reporting channels are clear and accessible.
- **Stakeholder communication.** The organisation must explain and communicate clearly and regularly with suppliers, customers, subcontractors, and business partners that the corporation has set up and maintained a whistleblowing policy and practice to fight against corruption and other legal and regulatory breaches to maintain a high ethical level of business. They should be encouraged to use designated channels to raise their concerns or report on any irregularities.
- **Collaboration.** The governance professional should assist directors in facilitating collaboration among ethical leaders or governance professionals with others in their organisations. Ethical leaders or governance professionals should always state and emphasise

6 Baker McKenzie. "Whistleblowing Trend Watch: Insight." Whistleblowing Trend Watch, <https://www.bakermckenzie.com/en/insight/publications/resources/whistleblowing-trend-watch>

that the fight against corruption and fostering business ethics can only succeed under an entity-wide joint effort of corporate individuals. This promotes an atmosphere where employees are more comfortable in disclosing wrongdoing.

- o **Conflict management.** This skill comes into play when a whistleblower raises a concern that could lead to disagreement or tension. Effective conflict management ensures that these situations are handled fairly, which maintains the trust and unity of the team. In this connection, governance professionals must help organisations identify their purpose and seek outcomes around this, which will provide an anchor to making the appropriate decisions in the particular circumstances of a case.
- o **Decision making.** Reliable decision-making by directors or governance professionals is crucial when addressing concerns or accusations reported by whistleblowers. Swift, firm, consistent and ethical decisions can reassure employees that their concerns will be taken seriously and wrongdoings will be addressed promptly, fortifying their trust in the whistleblowing system.
- o **Resilience under stress.** The pressure of leading an organisation ethically, especially while dealing with whistleblower reports, can be immense. Even under stress, the organisation's resilience and adherence to rules can project steadiness and consistency, thus

upholding the employees' faith. Through professional support, the governance professional can relieve the stress by offering a clear pathway for investigation and seeking appropriate outcomes from the whistleblowing process.

## The "Hardware"

As trusted advisers, governance professionals should be aware of the following technical matters as part of applied governance to discharge their advisory roles and responsibilities effectively. Various methods, such as phone/email hotlines, assigned conduct observers in each team, and external reporting services, can serve as platforms for employees to report ethical concerns<sup>7</sup>.

- **Phone/email hotlines.** According to a 2023 Asia Pacific Conduct Watch Survey Report published by Deloitte, over 80% of organisations have adopted email as one of their reporting channels<sup>8</sup>. This traditional yet effective method allows trained analysts to interview the whistleblower and obtain important disclosure details. Employees can report their concerns directly and anonymously, assuring their protection while promoting organisational transparency.
- **Web-based platform.** With the growing digitalisation of business operations, online platforms could be a handy option for many organisations, especially multinationals with offices worldwide. Establishing a web-based whistleblowing platform could break the geography and time zone barriers. It allows employees to report wrongdoing while ensuring anonymity and helps the company collect systematic information that could be useful for future analysis.

7 Official Journal of the European Union. "Directive (Eu) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law." *Official Journal of the European Union*, 26 Nov 2019, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937.

8 Deloitte. "2023 Asia Pacific Conduct Watch Survey Report". *Deloitte Touche Tohmatsu Limited*. 2023.

- **Conduct observer.** The role of a conduct observer would be to act as the point of contact for reporting concerns and be responsible for training and monitoring ethical conduct. Instituting a conduct observer within every team encourages employees to speak with him/her when they see wrongdoings occurring. It promotes a culture in which employees can openly discuss ethical dilemmas, fostering trust and mutual respect among employees. Employees may also feel more comfortable speaking with a close counterpart.
- **External reporting service.** Over 25% of conduct watch survey respondents said they rely on the case management system provided by external whistleblowing service providers when asked about how companies manage and monitor whistleblowing disclosures and follow-up actions. Engaging an external service provider not only eases case management but also ensures unbiased processing of the reports and upholds the integrity of the process. This also addresses a key issue: the whistleblower must feel safe against retribution and for the complaint to be followed up. The leaders

will need to weigh the costs and benefits of internal disruptions and systems design with the confidence and outcomes of the process. There is a 'no one size fits all' approach, and external support is worth considering in appropriate cases. At least an attempt must be considered to insert objectivity into the whistleblowing system where complaints are fairly considered and dealt with as part of good governance practices.

## Conclusion

The need for directors and senior management's role in cultivating business ethics is indisputable, which the governance professional might take on or, in any case, support. Not only are they stewards of organisational morality, but they are also crucial in fostering an environment that encourages whistleblowing and, in turn, promotes ethical business practices. The future direction of business ethics hinges on management's recognition of this pivotal role and the consistent culture-setting that ensues. Our next guidance note will delve deeper into the whistleblowing requirements under the Listing Rule and some related themes.