

# UNDERSTANDING WHISTLEBLOWER PROTECTION:

LAWS, PRACTICES, TRENDS AND KEY  
IMPLEMENTATION CONSIDERATIONS



## ABOUT THE INTERNATIONAL FEDERATION OF ACCOUNTANTS

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# FOREWORD

Whistleblowing and whistleblower protection have emerged over recent decades as critical public policy issues worldwide. We have seen a significant expansion of legislative activity in this space. At the time of publication of this Report, 60 jurisdictions now have dedicated whistleblower protection laws, with almost half of that activity in just the past five years.

This is encouraging progress, and this positive trend should continue over the coming years as more and more jurisdictions recognize the importance of codifying whistleblower protection in law. At the same time, experience has demonstrated how challenging development and effective implementation of whistleblower protection legislation can be. This Report builds off of [Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation](#) from the International Bar Association and the Government Accountability Project published in 2021, which highlights these challenges.

IFAC's [Anti-Corruption Action Plan](#) underlines the importance of the accountancy profession and professional accountancy organizations (PAOs) as key stakeholders in the fight against corruption and economic crime. IFAC's [Global Fight, Local Actions](#) goes further and aims to encourage and equip PAOs to be key stakeholders in their jurisdictions. This Report, *Understanding Whistleblower Protection: Laws, Practices, Trends and Key Implementation Considerations*, complements these initiatives and endeavours to provide additional information for PAOs and the accountancy profession. It encourages them to actively participate in whistleblower protection policy discussions in their jurisdictions by grounding the discussion with evidence-based research and practical perspectives.

It is important to emphasize that the accountancy profession is a key stakeholder in whistleblower protection. Professional accountants have a central role to play in supporting a speak-up culture in organizations, regardless of size, and regardless of whether those organizations are in the private or public sector. The accountancy profession has been a global leader in reflecting key whistleblowing principles in the global ethics code through the standard for non-compliance with laws and regulations ([NOCLAR](#)) developed by the International Ethics Standards Board for Accountants (IESBA).

As with our 2020 report, [Approaches to Beneficial Ownership Transparency](#), CPA Canada and IFAC aim to bring PAOs and the accountancy profession up to speed on these important but often technically challenging topics so that they may reach their engagement potential. With this Report, we emphasize important points for PAOs and professional accountants. We call on PAOs worldwide to actively engage in whistleblowing related policy discussions in their jurisdictions, thereby demonstrating their commitment to the public interest.

At the same time, as leaders in the global accounting community, we call on professional accountants to promote the adoption of effective whistleblower channels across organizations, governments, and not-for-profit entities as an integral element to promote ethical and responsible business. The accountancy profession, with its strong public interest commitment must champion protection of whistleblowers from retaliation and accountability for wrongdoers.



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# SECTION 1: INTRODUCTION

When people report or disclose information about wrongdoing in the public interest, they are often called *whistleblowers*. Whistleblowers play a valuable role in uncovering financial wrongdoing, economic crimes and corruption, and whistleblower protection laws are necessary to support a speak-up culture in the public interest. The information can help employers, regulators, law enforcement and the wider public to learn about wrongdoing, help prevent serious harm and stop it from happening in the future.

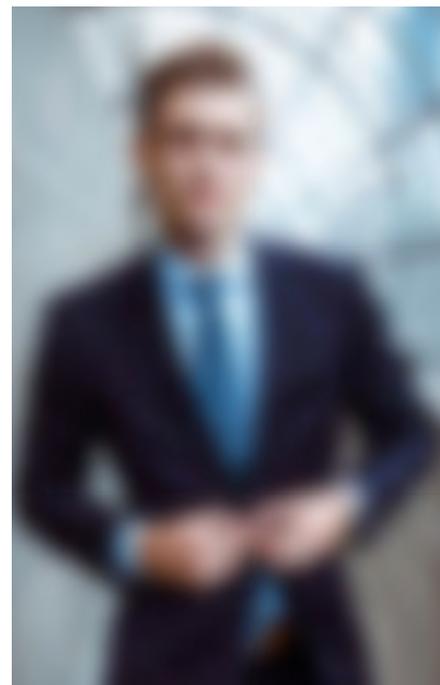
This Report has been developed to provide accountancy professionals, professional accountancy organizations (PAOs), relevant authorities and policymakers globally with information and knowledge related to the following:

- The role of whistleblowers and how they can help address some of the most serious issues facing society.
- Current issues in the adoption and implementation of whistleblower protection legislation.
- Key policy considerations to help ensure that local frameworks are fit for purpose.

Research consistently confirms workplace whistleblowing to be one of the most effective ways to detect wrongdoing; however, it also demonstrates that people give up after one or two attempts.<sup>1</sup> There are institutional, cultural and social barriers to reporting wrongdoing.<sup>2</sup> These barriers can be reinforced through public exposure that focuses on scandals or tragedies where the information disclosed has not been heeded, or a whistleblower has suffered personally and professionally.<sup>3</sup> Despite this, people all over the world continue to try to speak up in the public interest, and greater numbers of people would likely come forward given the right circumstances.

In recent years, there has been a proliferation of laws to protect whistleblowers. More resources are available to support employers and institutions in developing systems and practices to help people speak up safely. It is important to recognize that, although the value of a speak-up culture in organizations and institutions lies in its ability to bring potential compliance issues to the attention of management who must then ensure that each issue is effectively addressed,<sup>4</sup> the scope of information that falls within whistleblower protections is wide and not limited to compliance issues.

While the progress made is encouraging, whistleblower laws globally have generally fallen short in terms of their effectiveness, as detailed in a 2021 research report from the International Bar Association and the Government Accountability Project, [Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation](#) (the IBA-GAP report).<sup>5</sup> This Report looks to build from the IBA-GAP report with recent developments and a greater focus on relevance to the accountancy profession.



**ALERTADOR**

**NAIBU KOKUHATSU**

**WHISTLEBLOWER**

**SYGNALISTA**

**LANCEURS D'ALERTE**

**UZBUNJIVAČ**

**KLOKKENLUIDER**

**FLUITIJEBLASER**

## SECTION 2: WHY WHISTLEBLOWING MATTERS

Whistleblowing is increasingly understood as a matter of protecting the public interest. This increased value is resulting in the worldwide reinforcement of good governance, strengthening of democratic accountability, and development of more effective institutional practices and stronger legal protections for whistleblowers. At an organizational level, whistleblowing is an important element in a framework to conduct ethical and responsible business and have effective compliance programs that foster a speak-up culture.<sup>6</sup>

This section provides a broad overview of the practical value of whistleblowing and why strong whistleblower protection legislation is needed to support people speaking up when confronted with, or aware of, wrongdoing.

### The Practical Value of Whistleblowing

Supporting whistleblowing helps organizations be more resilient, proactive and accountable against issues of wrongdoing. Research shows that whistleblowers can prevent reputational damage and avert costly legal battles<sup>7</sup> by prompting action to address issues and allowing organizations to be more transparent and accountable for their decision-making.<sup>8</sup> In practical terms, whistleblowers detect more fraud and other serious economic crimes than other detection methods, including audits and internal compliance.<sup>9</sup>

In a 2017 European Commission study on the economic benefits of whistleblower protection, it was determined that the potential benefits in terms of recovered public funds uniformly exceeded the costs of implementing systems to protect whistleblowers. In some countries, the potential benefits outweighed the costs by a ratio of 319:1.<sup>10</sup>

However, without evidence to the contrary, the occasional publicly exposed scandal or tragedy can give those in leadership the impression that even if laws and whistleblowing channels are necessary, they will only be used for rare and difficult cases. A series of research studies in Australia challenged these assumptions by identifying employee whistleblowing as the single most important way that wrongdoing is brought to light in public sector organizations.<sup>11</sup> It also revealed that of the almost 42 per cent of employees across all sectors who observed wrongdoing in their current or previous organization, 68 per cent of them said they reported it.<sup>12</sup> However, on average, 42 per cent of employees reported being treated badly by management and colleagues as a result of reporting a concern,<sup>13</sup> and a majority said they did not know what happened to their concern<sup>14</sup> despite managers reporting “positive” outcomes (wrongdoing found and at least partially dealt with) in a large proportion of cases (on average 56 per cent).<sup>15</sup> The institutional challenge is to ensure that people can speak up as freely as possible — reassured that it is welcome and safe to do so — while handling disclosures in a balanced way with appropriate updates and feedback to those concerned.



## What Do People Need to Be Able to Speak Up?

The two main reasons people cite for not speaking up are believing that nothing will change and believing that they will suffer unfairly in their professional and personal lives.<sup>16</sup> People do not act simply because someone tells them it is safe to do so; people act when they think it will make a difference.

In practical terms, people need to know what their options are and where they can go if they are concerned about wrongdoing. They need to understand what will happen next and what reassurances they can expect to receive, including what they should do if they experience unfair treatment after disclosing information.

### *Organizational Arrangements*

One important way to encourage people to speak up early rather than to stay silent is for organizations to implement safe and effective channels for employees to disclose information and bypass the usual management lines when needed. Some organizations extend their policies to anyone with a concern, whether they work for the organization or not, and some engage external hotline providers to receive reports. Others provide access to independent advice and support.

### Implementing whistleblowing channels

There are several guides that focus on what to consider when setting up internal arrangements or channels. The most recent is from the International Standards Organization (ISO). The [ISO 37002 \(2019\) Whistleblowing Management Systems – Guidelines](#) were developed over four years by experts from 40 different countries and liaison bodies. Designed for organizations of all sizes in all sectors, these guidelines represent the current global consensus on what good practice looks like when handling whistleblowing reports.<sup>17</sup>

### *External or Regulatory Channels*

Organizations do not always get it right, whether through lack of oversight or follow through, deliberate misconduct or because they are skeptical of whistleblowers. This is why most laws protect alternative channels for whistleblowers to disclose wrongdoing. These include being able to disclose information to relevant authorities who have the mandate and power to act, along with the knowledge, experience and skills to investigate and address the problem.

Most whistleblower protection laws protect disclosures to external competent bodies — to sector regulators, as in banking or food safety; to government oversight bodies, such as national auditors and civil service commissions; and to law enforcement. These oversight bodies are most effective when they have access to relevant information, and an increasing number of authorities around the world are setting up hotlines to encourage direct reporting to them, including anonymously.<sup>18</sup>

### *Public Disclosures*

There are times when the mechanisms that are meant to provide external oversight, as set out above, do not work or are unavailable. In those cases, people may try to alert the public, via the media, civil society organizations or by self-publishing. While often the riskiest option for individual whistleblowers in terms of being protected in law and in practice, public disclosures are recognized as an essential democratic safeguard in many jurisdictions. For example, public disclosures are specifically protected in the U.K. [Public Interest Disclosure Act](#) (Sections 43G and 43H) and in Article 15 of the new [EU Directive 2019/1937](#) (the EU Directive) on the protection of whistleblowers.

“

**A common thread ties together the right of access to information, the protection of sources of information and the protection of whistleblowers: the public’s right to know.”**

– UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye. [Report on the protection of sources of information and whistle-blowers](#). A/70/361.8 September 2015.

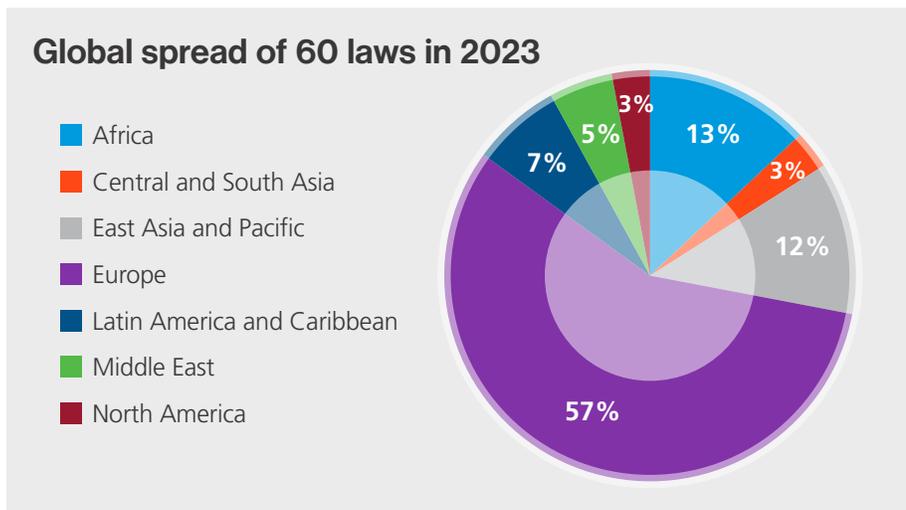
# SECTION 3: WHISTLEBLOWING IS A GLOBAL ISSUE

Whistleblower protection as a distinct legal concept is new, though early manifestations can be seen in First Amendment free speech rights (1791) in the U.S.,<sup>19</sup> the Swedish Freedom of the Press Act (1949) and the Constitution of Sweden (1974).<sup>20</sup> This section reviews the global development of whistleblower laws and regional initiatives, identifying some key recent trends in legal coverage.

## The Development of Whistleblower Laws

Laws that focus solely on whistleblower protection in the public or private sectors, or both, are called *dedicated laws*. The first dedicated laws were adopted in English-speaking countries with a common-law tradition. Of the 60 dedicated laws adopted to date,<sup>21</sup> 36 are in non-English speaking countries with civil-law or mixed legal traditions. Figure 1 illustrates that the highest concentration of laws globally is in Europe and North America, followed by the wider Asia Pacific region, Africa and finally Latin America, including the Caribbean.

**Figure 1** – Global spread of dedicated whistleblower protection laws in 2023<sup>22</sup>



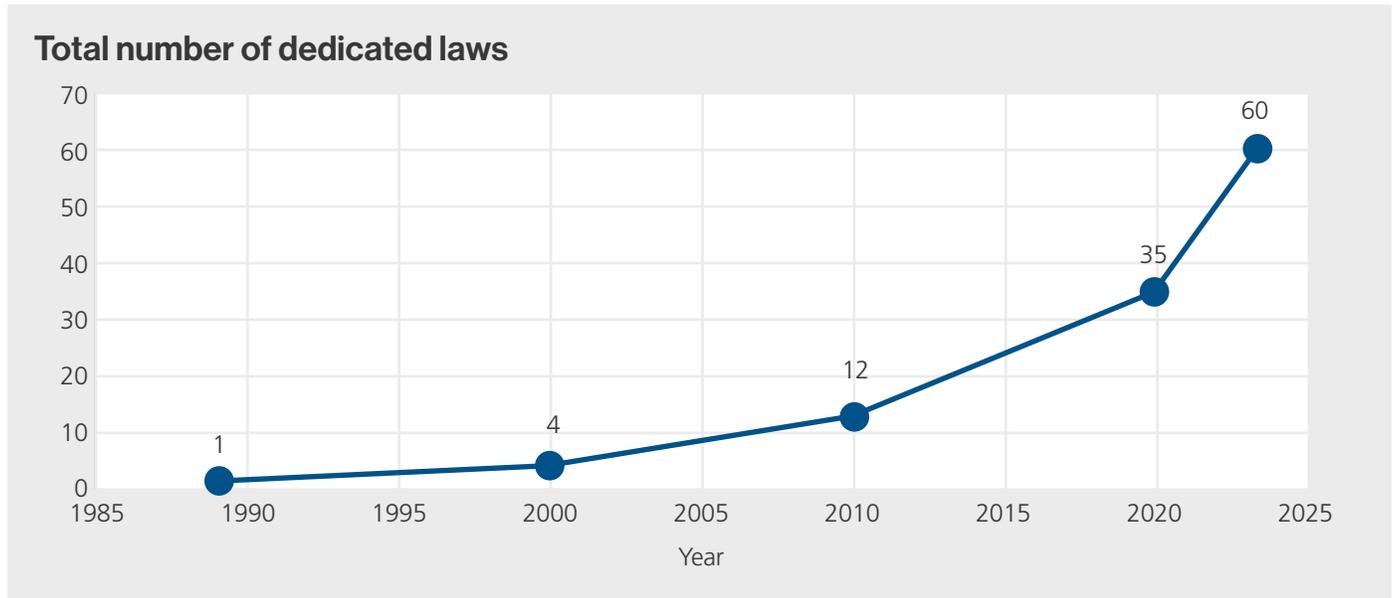
The current global trend is toward adopting *comprehensive laws*, which are single laws that cover all sectors. Ireland, for example, adopted a number of separate legal provisions and replaced these with a comprehensive law to fill what were considered significant gaps and unnecessary fragmentation.<sup>23</sup> However, there remain notable exceptions. The U.S., for example, first legislated to protect whistleblowers in federal agencies in the late 1970s with a dedicated law in 1989. Since then, the U.S. has adopted 50 separate laws to protect private sector workers in different industries.

“ Whistleblowers...are the final defense against corruption and state capture taking hold in SOEs [state-owned enterprises]. Without people... who are willing to resist the pressures being applied on them to bend the rules, the chances that these illegal activities...will be exposed reduces considerably.”

– Part 1 of the [Judicial Commission of Inquiry into State Capture Report](#) (the Zondo Commission Report), published in January 2022.

Figure 2 shows that most of the laws worldwide have been adopted since 2010. There has also been an acceleration in legislative activity since 2019 and the adoption of the EU Directive on the protection of whistleblowers. While some EU Member States already had legal protections for whistleblowers, all needed to reform their laws, and 13 have had to adopt laws for the first time.<sup>24</sup>

**Figure 2** – The number of dedicated whistleblower protection laws adopted globally since 1989.



## Regional Initiatives and Multi-Lateral Instruments

### Europe

Whistleblower protection has been on the European political and legal agenda since 2009 when the Council of Europe examined whistleblower protection as a mechanism to prevent corruption and strengthen the rule of law.<sup>25</sup> In 2014, the Council of Europe’s Committee of Ministers developed a legal instrument to guide its 46 Member States on implementing legal and institutional protections for the safe disclosure of information in the public interest.<sup>26</sup> In 2019, the European Union adopted an EU Directive on whistleblower protection, which all 27 EU Member States are required to transpose into their national legal and institutional systems.

### EU Directive on the protection of reporting persons

The EU Directive 2019/137 is designed to improve the protection of whistleblowers across the EU by setting minimum standards and encouraging member states to go further.<sup>27</sup> It is one of the first multilateral legal instruments to set out duties and responsibilities on employers and external competent bodies for handling whistleblowers and the information they report, and for which they are separately liable. Once transposition is complete, 14 countries will have implemented new whistleblower protections for the first time, and 13 will have significantly reformed or replaced their existing laws.<sup>28</sup>

The European Court of Human Rights has made several influential rulings with respect to whistleblowing under Article 10 (the right to freedom of expression and the public's right to know). The Court has stated that in a democratic system, "the acts or omissions of government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion" and in a recent decision, the Court has recently refined its criteria in relation to a private sector case.<sup>29</sup>

#### *Organisation for Economic Co-operation and Development*

The Organisation for Economic Co-operation and Development (OECD) has promoted the importance of whistleblower protection across several initiatives, including through the OECD Anti-Bribery Convention. In 2010, the G20 identified whistleblower protection as a high priority in their global anti-corruption agenda and included the OECD compendium of best practices and guiding principles for whistleblower protection legislation in the G20 Anti-Corruption Working Group Monitoring Report.<sup>30</sup> The OECD Working Group on Bribery includes whistleblower protection in its monitoring program.

One of the key elements of the 2021 revisions to the Recommendation for Further Combating Bribery of Foreign Officials in International Business Transactions (Anti-Bribery Recommendation), which supports implementation of the OECD Anti-Bribery Convention, was to include extensive provisions to ensure comprehensive and effective protection of whistleblowers in the public and private sectors.<sup>31</sup> As well, the 2021 revisions further strengthened the Anti-Bribery Recommendation's provisions on persons reporting bribery and enhancing international cooperation of these mechanisms.<sup>32</sup>

The OECD has published reports and guidance on whistleblowing in the public and private sectors and on various topics, including integrity in business, cross-border challenges to protection and acting on corruption in sport.



### The role of professional associations in the OECD Anti-Bribery Recommendation

Professional associations that exercise regulatory powers over certain professions may also play a significant role in adopting and implementing robust ethics standards for their members, including by setting out frameworks on actions to be taken by their members to prevent bribery or when confronted with suspected acts of foreign bribery and related offences committed by clients or employers.<sup>33</sup>

#### *United Nations*

The United Nations Office on Drugs and Crime (UNODC) published a Resource Guide on Good Practices in the Protection of Reporting Persons in 2015.<sup>34</sup> The Guide was designed to support the implementation of the provisions of the 2003 United Nations Convention Against Corruption (UNCAC), which provides for the protection of **anyone**, including witnesses and their relatives. By emphasizing "facts concerning offences," UNCAC broadened the scope of information that could be protected.<sup>35</sup>

## Other Regional Initiatives

### Latin America and the Caribbean

- Organization of American States (OAS) adopted the Inter-American Convention against Corruption in 1996<sup>36</sup> and developed two model laws on whistleblower protection.<sup>37</sup>

### Africa

- Southern Africa Development Community adopted the Protocol Against Corruption in 2001.<sup>38</sup>
- African Union adopted the Convention on Combating and Preventing Corruption in 2003, including whistleblower protections.<sup>39</sup>

### Asia Pacific

- The Asia-Pacific Anti-Corruption Initiative launched an Action Plan in 2001 and included the protection of whistleblowers.<sup>40</sup>
- The Hong Kong Stock Exchange introduced a code provision requiring companies to implement a whistleblowing policy and system.<sup>41</sup>



## Incentive Programs

In the wake of U.S. corporate scandals, such as Enron and the global banking crisis of 2008, whistleblower incentive programs were strengthened and expanded in the U.S. with a global impact. This expansion includes the establishment of a whistleblower program at the U.S. Securities and Exchange Commission (U.S. SEC) under the *Dodd-Frank Act*, which covers all companies listed on U.S. stock exchanges.<sup>42</sup> As set forth in the *Dodd-Frank Act*, the U.S. SEC protects the confidentiality of whistleblowers and does not disclose any information that could reveal a whistleblower's identity.

### Whistleblower incentive programs

Incentive programs aim to encourage disclosures by offering a potential monetary award. The two main incentive program models are outlined below.

*Qui tam* is a distinct branch of whistleblowing law in which a person(s) can bring a civil action against a corporation on behalf of the government under any federal program, including for healthcare fraud. For example, under the U.S. *False Claims Act*, if the government takes control of the action and the action is successful, the "relator" receives 15 to 20 per cent of the "collected revenues." If a relator proceeds alone, it increases to 25 to 30 per cent.<sup>43</sup> Since the *False Claims Act* was modernized in 1986, the U.S. government has recovered \$72 billion.<sup>44</sup>

*Reward programs*, such as the one run by the U.S. SEC, offer between 10 and 30 per cent of collected revenues<sup>45</sup> to those who voluntarily provide original information that leads to a successful enforcement action. The sums awarded can be significant.<sup>46</sup>



### Anti-money laundering

The U.S. has relied more on incentive programs than any other jurisdiction. Most recently, the 2020 Anti-Money Laundering Law (AMLA) updated its existing whistleblower incentives and strengthened its employment protections. The definition of a whistleblower was extended to anyone who reports violations including “as part of the[ir] job duties,” whether they report internally first or directly to the government. This means that compliance officers, auditors, and legal counsel are likely to be better protected under the new AMLA than under the *Dodd-Frank Act*. *Dodd-Frank* governs the *Sarbanes-Oxley Act* (SOX) and the U.S. SEC program (amongst other laws), which have more limited eligibility criteria for rewards and require disclosures to be made to the government first.

Research shows incentive programs are highly effective for regulating bodies as a means to gather actionable information.<sup>47</sup> The criteria applying to how rewards will be granted, and the length of time often involved in an enforcement action means that, generally, only a limited number of whistleblowers receive compensation. Such programs can, therefore, be seen as an additional tool for policymakers and authorities to consider along with the range of other protective measures and legal remedies included in this Report (see [Section 4 – Step 6](#) and best practice principles in [Annex 1](#)).

## SECTION 4: SIX LESSONS LEARNED SO FAR

Since the EU passed the whistleblower protection directive in 2019 requiring all Member States to introduce laws with stronger minimum standards, 60 countries now have dedicated whistleblowing statutes around the world and are incorporating improved standards into new laws and reforms. This section sets out six broad lessons that have been learned from the research findings in this Report, and it describes some of the factors that have influenced these changes to laws and practices. These lessons learned, along with the compendium of best practice principles in [Annex 1](#)<sup>48</sup> can be referred to together when applying the implementation considerations in **Section 5** of this Report.

In brief, whistleblower protection laws and practices are more effective when they are developed using guidance from the following lessons:

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### **Lesson 1: There is proactive implementation, including an evidence-based approach and consultation**

Before a crisis or requirement forces a government to act, laws and practices are developed by means of local expertise and stakeholder consultation, and by adapting international best practice principles jurisdictionally. Refer to all best practice principles, specifically 11, 12 and 13 in Annex 1.

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### **Lesson 2: Protections are grounded on the public interest**

The range of information about wrongdoing and potential harm is defined widely in the public interest. Refer to best practice principles 1, 2, 10 and 14 in Annex 1.

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### **Lesson 3: There is a focus on accountability**

Organizations are liable for how they handle the message as well as for any detriment caused to a whistleblower. Refer to best practices principles 3, 4, 5 and 7 in Annex 1.

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### **Lesson 4: Protections extend beyond the workplace**

Whistleblower protection laws protect a wide range of persons and ensure anyone who comes across and reports wrongdoing in a work-related setting is protected, along with those associated with or supporting them. Refer to best practice principles 1, 4 and 8 in Annex 1.

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### **Lesson 5: There is a level playing field**

The burdens of proof and other legal tests for protection are drafted to ensure unfair legal barriers are removed. Refer to best practice principles 5, 6, 7 and 8 in Annex 1.

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### **Lesson 6: There is early access to advice and other support services**

Early independent legal advice and access to psychosocial support for whistleblowers are recognized as protective measures. Refer to best practice principles 8 and 9 in Annex 1.

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The lessons are explored in more detail below.



## 1. Proactive Implementation, including Evidence-Based Approach and Consultation (All principles, specifically 11, 12 and 13, Annex 1)

Whistleblower protection laws and practices are more likely to be effective when they are:

- implemented before a crisis, scandal or an external requirement (e.g., regulatory, legal, etc.) forces a government to act
- developed using an evidence-based approach with proper consultation

Consulting key stakeholders in and outside government and across sectors also creates legitimacy for any program of reform and helps ensure public engagement and support. Stakeholders may include relevant ministries, regulators, judicial and law enforcement authorities, trade unions and business groups, legal and advocacy organizations, and whistleblowers.

### Serbia: Ministry of Justice Working Group

The Ministry of Justice set up a working group of more than 20 representatives from different ministries, major unions, and employers' associations, including the chambers of commerce. It included two whistleblowers, judges from all court levels, civil society representatives, and four international experts participating in specific meetings. The draft bill was published for comment, and a six-month implementation period allowed for the training of judges and a code of practice for employers to be prepared prior to the law coming into force in June 2015.

## 2. Protections Are Grounded on the Public Interest (Principles 1, 2, 10 and 14, Annex 1)

### What does the public interest mean?

The *public interest* is a legal concept that covers matters relating to the well-being or welfare of the public, or the collective good. In common-law countries, the concept of the public interest allows judges and decision-makers to consider all the interests at stake, even when not represented in the specific case before them or in the process of decision-making. In France, for example, the term *l'intérêt* general serves a similar legal function: to ensure actions or policies account for wider collective interests. It is considered the basis of all public law and actions in France.

There is a balance to be struck between certainty and flexibility. However, too narrow of a definition of wrongdoing, or one that only protects certain types of disclosures, can create an uneven system of protections. How the U.S. and U.K. have defined the public interest in their whistleblower protection laws has been generally broad enough for the courts to protect a wide range of wrongdoing.

### U.S. and U.K. definitions of the public interest

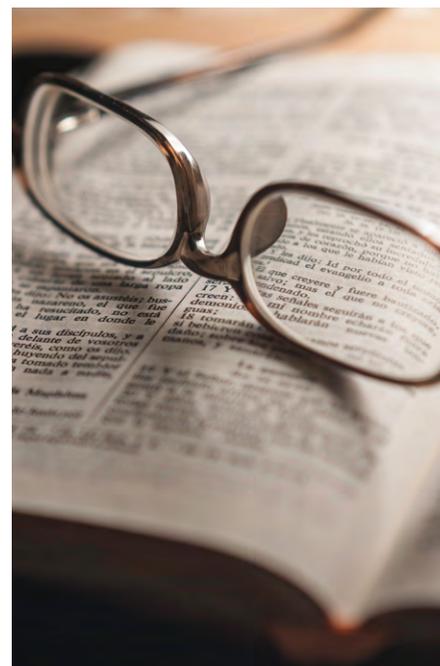
Information qualifying for protection under the *U.S. Whistleblower Protection Act* includes “any illegality, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety and any other activity that undermines the public welfare or institutional mission to corporate stakeholders as well as any other information that assists in honoring those duties.”<sup>49</sup>

The U.K. *Public Interest Disclosure Act* (PIDA) covers information that “tends to show” the commission of any criminal offence or a failure to comply with **any** legal obligation, miscarriages of justice, endangerment to the health and safety of anyone, environmental damage, or a cover-up of any of these issues. The information can be about past, present or future wrongdoing, and it is not restricted by geography.<sup>50</sup>

### 3. There Is a Focus on Accountability (Principles 3, 4, 5 and 7, Annex 1)

Most legal remedies are only triggered after a whistleblower has suffered harm; how an organization handles concerns or mitigates the risk of reprisal against whistleblowers has remained largely unregulated. Even where whistleblower protections appear strong on paper, if such rights are rarely enforced by the courts, there can be little deterrence on organizations from retaliation.

The focus is shifting toward regulating the conduct of employers and authorities and holding them to account for how they handle the message as well as how they respond to the messenger. The EU Directive and the Australian Treasury Law Amendments are examples of this trend. The EU Directive includes penalties against those who retaliate as well as those who try to prevent someone from blowing the whistle or disclosing a whistleblower’s identity without their consent. Organizations with more than 50 staff are required to implement whistleblowing procedures, and EU Member States must report annually to the EU on the number of cases their authorities handle. The Australian Treasury Law Amendments require corporations to implement whistleblowing arrangements and creates a duty of care to their staff, meaning they are liable if they fail to prevent detrimental acts.<sup>51</sup>



### 4. Protections Extend Beyond the Workplace (Principles 1, 4 and 8, Annex 1)

#### *Anyone with Information?*

It is important to consider whether protection should be limited to those connected to the workplace. In some countries, like Ghana, for example, the law covers **anyone** who reports an “impropriety” with specific remedies for non-employees.<sup>52</sup> Uganda protects both workers and any “person,” and clearly sets out that disclosures may be made internally in the case of workers, as well as externally to the authorities by both workers and any other person.<sup>53</sup> This trend toward protecting members of the public is growing, as demonstrated in recent discussions on draft laws in Mexico and Kenya.

The U.K. adopted an expanded notion of “worker” to include trainees, agency staff and homeworkers to cover a wider range of those who might come across wrongdoing in the course of their work. A recent U.K. Supreme Court decision

confirmed judges are covered.<sup>54</sup> New Zealand has gone further by covering anyone who has “an employment type relationship.” This includes current and former employees, contractors, volunteers and board members.

The EU Directive covers anyone who facilitates or assists a whistleblower in the workplace as well as any other person connected with the whistleblower, such as colleagues or relatives.<sup>55</sup> France extended protection to “legal persons” who facilitate whistleblowers, thus ensuring unions and non-profit organizations working with whistleblowers are also protected should they be subject to retaliation or harassment.<sup>56</sup>

#### *Protection Against Full Range of Retaliatory Acts*

While protection against a full range of workplace detriments (e.g., retaliation and harassment, lack of promotion, and dismissal) is essential, whistleblowers also need protection against lawsuits (e.g., the threat of being sued civilly by their employer) or criminal prosecutions. Threats against the safety of whistleblowers and those associated with them, including their families, are an increasing concern globally, and jurisdictions like South Korea, Tanzania and Lebanon specifically include protections against physical threats in their whistleblowing laws.<sup>57</sup>

Whistleblower protection laws ensure that rules around workplace confidentiality and loyalty to one’s employer cannot be used to cover up wrongdoing. This extends to the range of contractual agreements between workers and employers.

#### **Non-disclosure agreements or “gagging clauses”**

Contractual agreements can include provisions that ban the disclosure of certain information, either about the terms of the agreement or about the issue that gave rise to it. These are known as non-disclosure agreements (NDAs) or gagging clauses. The U.K. renders void any provision in any agreement that purports to stop someone from making a protected disclosure,<sup>58</sup> and the Office of the Whistleblower at the U.S. SEC has a rule that prohibits anyone from acting to prevent someone from contacting the U.S. SEC directly to report a possible securities law violation, “including by enforcing or threatening to enforce a confidentiality agreement...”<sup>59</sup>

Issues of contractual confidentiality, professional secrecy and legal privilege, where applicable, should be carefully considered, and seeking legal advice may be necessary. Whistleblowers need to be aware of duties of confidentiality owed to third parties, such as those that apply to lawyers, accountants and doctors with respect to their clients or patients. In some jurisdictions, some legal duties to report wrongdoing specifically breach duties of confidentiality to protect other important public interests such as in cases of suspected child abuse or reporting instances of money laundering.

#### **National security**

There may be limitations to whistleblower protection in relation to national security. European Court of Human Rights (ECtHR) case law deals with the public disclosure of government information and makes it clear that while protection should be available, it involves a considered examination of the interests at stake. Ireland’s *Protected Disclosure Act 2014* (amendment 2022) includes a separate regime for anyone wishing to disclose information that could harm national interests related to security, defense, international relations and intelligence,<sup>60</sup> and in France, all military personnel are afforded the same level of protection as other civil servants as long as they do not disclose information that may harm national security.<sup>61</sup> A good resource for navigating these issues is the Global Principles on National Security and the Right to Information (Tshwane Principles).<sup>62</sup>

Whistleblower protection laws, therefore, can clarify disclosure limitations and provide a brake to unfair legal claims against whistleblowers. Examples include:

- Civil and criminal immunity for anyone having made, received, investigated or otherwise dealt with a protected disclosure notwithstanding any duty of secrecy or other prohibition against the disclosure of information (e.g., Jamaica).<sup>63</sup>
- Immunity from civil or criminal liability such that whistleblowers cannot be sentenced for any offenses committed as part of gathering proof that a breach or harm to the public interest has occurred, as long as they became **aware** of the wrongdoing “in a lawful manner” (e.g., France).<sup>64</sup>

### The International Ethics Standards Board for Accountants (IESBA) NOCLAR Standard

Responding to Non-compliance with Laws and Regulations (NOCLAR) is a global ethics standard that addresses professional accountants’ (PAs) responsibilities when they come across NOCLAR or suspected NOCLAR in their professional activities or services.<sup>65</sup> The backdrop to the standard was the series of major corporate scandals in the 2000s, including Enron, Worldcom, Tyco and Parmalat. The standard became effective July 15, 2017.

The standard was developed to respond to certain key public interest concerns and sets out a comprehensive framework to guide PAs’ judgments and actions when they become aware of NOCLAR committed by a client or employer, recognizing PAs’ responsibility to act in the public interest under the IESBA Code.

The scope of laws and regulations covered includes those that directly affect the client’s or employing organization’s financial statements or its business in a material or fundamental way. A key provision permits PAs to set aside the duty of confidentiality under the IESBA Code to disclose NOCLAR or suspected NOCLAR to an appropriate authority in certain circumstances.

Whilst the standard applies to all PAs, it stipulates a different but proportionate approach for auditors, other PAs in public practice, senior PAs in business and other PAs in business.

## 5. Level Playing Field: Burdens and Tests (Principles 5, 6, 7 and 8, Annex 1)

### *Reverse Burden of Proof*

While whistleblowers can show they raised a concern and suffered a detriment (e.g., harassment, lack of promotion, demotion, dismissal, etc.), they are rarely able to prove the reason for an employer’s action. Requiring them to do so places too high a burden on the whistleblower, who will not have access to the information required to prove what was in the employer’s mind.

### Principle 25 of the Council of Europe 2014 Recommendation

“Once an employee demonstrates a *prima facie* case that he or she made a public interest report or disclosure and suffered a detriment, the burden shifts onto the employer, who must then prove that any such action was fair and not linked in any way to the whistleblowing.”

A reverse burden of proof is found in whistleblowing and corruption reporting laws around the world, including in Norway, Jamaica, Namibia, Slovenia, Croatia and the U.S.<sup>66</sup> It was recommended by the G20 in 2011 and included in the EU Directive.<sup>67</sup>

### *Good Faith Versus a “Reasonable Belief”*

The legal meaning of “good faith” is “made honestly.” It is not intended to act as a high test or a bar to protection unless it can be proven that the disclosure was demonstrably made for an ulterior and harmful purpose (e.g., something approaching blackmail). Good faith was originally included in the U.K. for regulatory and wider public disclosures but was removed in 2013 because it was being interpreted as a test of a whistleblower’s motivation.

Other examples:

- The Organization of American States (OAS) 2013 model law includes a presumption of good faith that automatically shifts the burden of proof onto the person/parties alleged to have retaliated against the whistleblower.<sup>68</sup>
- The ECtHR takes into account the reasonable belief of the whistleblower in the truth of the information when deliberating on the good faith of the whistleblower.
- The EU Directive states clearly that the motives of a whistleblower should be irrelevant to deciding whether someone should be protected; it should not matter if they are honestly mistaken.

#### Reasonable grounds to believe

EU Member States are required to protect those who have “reasonable grounds to believe, in light of the circumstances and the information available to them at the time of reporting, that the matters reported by them are true.”<sup>69</sup>

## 6. Early Access to Advice and Other Support Services (Principles 8 and 9, Annex 1)

When whistleblowers are asked what kind of support or knowledge they wished they had sooner, they often talk about understanding their rights and learning how to garner wider support. Those who did have this support reported making better decisions and being positioned as a legitimate voice in possession of the facts.<sup>70</sup>

Psychosocial support is increasingly recognized as a protective element. It can also help individuals in their decision-making and to move on positively from the experience. There are non-governmental organizations that specialize in providing access to these services for free,<sup>71</sup> and some governments and corporations direct staff to these independent organizations.<sup>72</sup>

Some governments provide legal aid to those making a claim for retaliation,<sup>73</sup> and authorities charged with receiving disclosures or handling claims of retaliation often provide information on the law and the steps people can take. A good example is the U.S. Office of the Special Counsel whose primary mission is to protect federal employees and applicants from “prohibited personnel practices,” especially reprisals for whistleblowing.<sup>74</sup> Other examples include:

- the Dutch Whistleblowers Authority
- the Korean Anti-Corruption and Civil Rights Commission
- the New Zealand Ombudsman
- the Slovenian Anti-Corruption Commission<sup>75</sup>

A 2022 comparative study of 24 authorities in Europe found 15 provide information on reporting procedures, possible risks of reporting, and available protective measures, and 11 offer more specialist legal assistance throughout the process or to those experiencing retaliation.<sup>76</sup>

# SECTION 5: EIGHT-POINT TOOL: DEVELOPMENT AND IMPLEMENTATION CONSIDERATIONS

This eight-point questionnaire is a discussion and informational tool designed to help guide accountancy professionals, professional accountancy organizations, relevant authorities and policymakers through the main considerations and issues in the adoption and implementation of whistleblower protection legislation. The questionnaire incorporates some of the newer developments in the field based on lessons learned, as set forth in **Section 4**, and the best practice principles in **Annex 1**.



- Point 1** What already exists in the jurisdiction?
- Point 2** What information should qualify for legal protection?
- Point 3** Who needs to be protected and why?
- Point 4** How best to ensure wrongdoing can be addressed?
- Point 5** How to make it safer for people to report wrongdoing?
- Point 6** How to remedy the unfair treatment of a whistleblower?
- Point 7** How to promote whistleblowing and build support for the protection of whistleblowers?
- Point 8** How to monitor and evaluate law and practice?

## Step 1: What Already Exists in the Jurisdiction? (Section 4 - Lesson 1, Annex 1 – Principles all apply)

Build awareness of existing laws and rules that support or hinder the disclosure of information, and identify existing norms and practices. Assessing the landscape helps to clarify how international best practices can be adapted most effectively.

Some suggested areas to examine include:

### 1. Rules and protections

- a. Reporting duties: corruption, suspected child abuse, money launderings, etc.
- b. Prohibitions against disclosure: banking, competition laws, trade secrets, utilities, nuclear power, national security, etc.
- c. Rights to freedom of expression and rules to protect the media and journalist sources.
- d. Laws to combat cybercrime and regulate online communications.

### 2. Existing practices

- a. Codes of conduct and internal whistleblowing policies.
- b. Official reporting platforms in different sectors or to report specific issues (e.g., fraud or corruption).
- c. Court judgments/decisions relating to “unlawful” disclosure, including relevant case law from regional or international judicial forums (e.g., EctHR).
- d. Official inquiries or media investigations into scandals or tragedies to identify communication and response failures.

### 3. Reports, studies, guides

- a. Disclosure as a matter of ethics, transparency, anti-corruption, human rights, free media, etc.
- b. Detecting wrongdoing in different sectors.
- c. Meeting international or regional legal obligations and best practices (e.g., anti-money laundering and anti-bribery rules, human rights conventions, regional instruments, etc.).
- d. Government responses to recommendations from inter-governmental bodies (e.g., UNCAC Review Mechanism, the s OECD country reviews, etc.).

## Step 2: What Information Should Qualify for Legal Protection? (Annex 1 – Principle 2)

The information gathered in Step 1 can be helpful to identify the range of information that could or should be protected.

The international trend is toward broadening the scope of information to any matter of wrongdoing or potential harm to the public interest. Most people will know when something is wrong but not which law or rule it breaches.

In an *organizational setting*, relevant information can be anything that undermines the organization's mission to the public, its staff, stakeholders, investors or customers.

Information that is useful for *regulatory bodies* or *law enforcement* can range from facts that, if verified, could prompt an investigation, to information that might add to an existing or future inquiry. The competent authority itself will know if the information is relevant to its mandate or not.

## Step 3: Who Needs to Be Protected and Why? (Section 4 – Lesson 4, Annex 1 – Principle 1)

Identify:

- Who is already speaking up and what happens to them.
- Who should be able to speak up and what stops them.

Policymakers will need to consider to whom to extend protections for disclosing information about wrongdoing. Some national authorities may already have such powers in relation to those who report specific types of wrongdoing to them; however, these tend to be limited and may not cover the full range of potential risks the individual runs by reporting. This should be considered in relation to the risks people might face for speaking up and in relation to information collected during Step 1.

There appear to be three general approaches to defining who is covered by whistleblower laws globally so far:

1. All workers, no matter where they work.
2. Workers separately in different sectors (public and private sectors).
3. Anyone who discloses information about wrongdoing, including those with specific work-related protections.



### Reminder:

Institutional arrangements to receive, assess and handle disclosures and to support whistleblowers responsibly are all part of the framework of protection.

### Step 4: How Best to Ensure Wrongdoing Can Be Addressed? (Section 4 – Lesson 3, Annex 1 – Principle 3)

Identify who is responsible for addressing wrongdoing to help identify the most appropriate recipients of disclosures of wrongdoing.

Whistleblower protection laws provide a safe alternative to silence when the usual channels for reporting wrongdoing are unavailable. The usual channels could be deliberately blocked or could lead directly to those involved in the wrongdoing.

In a work-related context, this means providing alternative internal channels to regulators or law enforcement that exist outside line management and the organization. Generally, the alternatives at the regulatory and law enforcement level include access to an independent appeal process and protection for making a wider or public disclosure.

Figure 3 shows who is typically closest to the problem and, therefore, best placed in terms of accountability for receiving disclosures and responsibility (and potential liability) for addressing risks and wrongdoing.

**Figure 3 – Accountability**



Diagram adapted from the Explanatory Memorandum to the Council of Europe Recommendation CM/Rec(2014)7 on the protection of whistleblowers

This diagram places the employer or “responsible person” at the centre. The next level are regulators and oversight bodies, who have powers to act to address violations in the sectors and activities they regulate. They are accountable to the government and to the public.

The final layer of accountability is public scrutiny, and disclosing crimes and freedom of expression are also included.

#### Ghana’s Whistleblower Protection Act, 2006

The law sets out a non-hierarchical list of 18 potential recipients, including, *inter alia*, an employer, a police officer, the Attorney-General, an MP or State Assembly Member, the Serious Fraud office, the Commission on Human Rights and Administrative Justice, a chief, the head or the elder of the family of the whistleblower and the head of a recognized religious body. In 2010 the Ghanaian Anti-Corruption Coalition published a guide to whistleblowing in Ghana.<sup>77</sup>

## Step 5: How to Make It Safer for People to Report Wrongdoing? (Section 4 – Lesson 5, Annex 1 – Principles all apply)

Consider how the law supports institutional practices to be more effective.

This is one of the most dynamic areas of whistleblower protection as organizations and authorities around the world set up whistleblowing channels and work to meet their legal obligations.

One of the first questions to ask is what risks does an individual run by disclosing the information? And second, what protective measures need to be in place and at what level? Many organizations and authorities around the world are adapting their systems and learning from each other. More are also likely to do so if there is a comprehensive whistleblower protection law in place and, in the case of regulatory authorities, resources available.

When a report is made, organizations and institutions should assess the potential risks of detriment to the whistleblower and other relevant interested parties, and plan accordingly. An early assessment helps protect the integrity of any investigation, and fulfill organizational and legal responsibilities involved.

Some of the elements of effective institutional channels, which are now legal requirements in some jurisdictions, can include the following:

- Training for those charged with handling disclosures and protecting whistleblowers.
- A range of communication methods (e.g., in-person, telephone, email, and online with encryption to allow anonymity and two-way communication).
- Guaranteeing confidentiality and explaining how it will be achieved.
- Protecting the information and any investigation to minimize the risks to the whistleblower and related parties, and to ensure suspected wrongdoers are treated fairly.
- Providing regular updates and clear feedback to the whistleblower clarifying when and how this will happen.
- Sharing information on a strictly need-to-know basis.
- Setting protocols and agreements with other external bodies on how to handle information in wider investigations.<sup>78</sup>



### Confidentiality and anonymity

Speaking up openly and without fear is the ideal scenario, but is not always possible. This is why confidentiality should be guaranteed, and anonymous reporting facilitated and protected.

*Confidentiality* means the identity of the whistleblower is known only to the recipient of the information and disclosed only by express consent (or court order). It should extend to how and what information is shared.

*Anonymity* is the state in which the identity of the person who disclosed information is unknown. While this raises some practical and legal issues that need to be examined in each jurisdiction, laws are increasingly requiring employers and regulators to protect individuals whose identities become known after they have disclosed information anonymously.<sup>79</sup>

The quality of guidance available to help organizations and authorities to set up whistleblowing systems and procedures is improving (see **Section 2**).

Related guides can also be helpful. For example, the 2018 revised guide published by the Asia Pacific Forum *Undertaking Effective Investigations: A Guide for National Human Rights Institutions*<sup>80</sup> can be applied to whistleblowing investigations as well as guides on whistleblowing in specific sectors, such as the UNODC and International Olympic Committee's guide *Reporting Mechanisms in Sport: Practical Guide for Development and Implementation*,<sup>81</sup> which offers a different perspective as well as transferable information.

## Step 6: How to Remedy the Unfair Treatment of a Whistleblower? (Annex 1 – Principles 4, 6 and 11)

Consider how remedies can be made more accessible and cover the full cost of reprisals.

The three key elements of remedies include the following:

1. range of appropriate remedies and full compensation (best practice principle 4)
2. access to impartial and independent decision-makers (best practice principle 6)
3. training of decision-makers (best practice principle 11)

### 1. Range of Appropriate Remedies and Full Compensation

A range of appropriate remedies, including injunctive relief and reinstatement, can significantly reduce and mitigate any damage done. In some jurisdictions, like Serbia, this is determined by a court, while in other jurisdictions authorities can provide relief. The Whistleblower Protection Office in Slovakia can support whistleblowers who face negative treatment, including bullying from their employer, supervisor or colleagues.<sup>82</sup>

#### The high costs to individual whistleblowers

Research published in 2021 found the average cost of making a public interest disclosure was \$284,585, with four per cent of whistleblowers spending over \$1 million. Of the reported disclosures, 63 per cent were dismissed, and 67 per cent reported a reduction in income of \$634,936 per whistleblower. In addition, 40 per cent of whistleblowers spent over 1000 hours on their disclosure, and two-thirds of whistleblowers experienced a decline in their mental and physical health.<sup>83</sup>

Compensation for reprisal must be sufficiently comprehensive to cover the direct, indirect and future consequences of whistleblowing.

### 2. Access to Impartial, Independent Decision-Makers

As the IBA-GAP report points out, whistleblowers should be afforded normal judicial due process rights, including:

- a. a timely decision
- b. calling witnesses and the right to confront accusers
- c. objective and balanced rules of procedure
- d. reasonable deadlines

Some countries have set up dedicated administrative processes or tribunal systems. However, experience shows the importance of maintaining the right to appeal directly to an independent court of law and avoiding a pre-approval process.

Similarly, internal processes to address complaints of retaliation should be structured to avoid institutional conflicts of interest. Otherwise, such proceedings are vulnerable to becoming de facto investigations of the whistleblower.

### 3. Training of Decision-Makers

Specialized training ensures judges and prosecutors have time to fully examine and understand the details of the legal protections available and their aim of protecting the public interest as well as the individual whistleblower.

#### Training of judges in Serbia

Serbia made it a legal requirement for judges to be certified before being allowed to hear a whistleblowing case. All judges must undergo dedicated training or otherwise risk being removed from a case. In contrast to low success rates worldwide, training of judges in Serbia has been heralded by remarkably high levels of success in whistleblowing retaliation claims. Serbia had an 80 per cent rate out of 15 final case decisions on the merits between 2017 and 2019. Serbian authorities report that interim relief determined by a judge on an urgent and temporary basis has been one of the most successful measures of protection available to whistleblowers. Prosecutors are also now receiving training in Serbia.

## Step 7: How to Promote Whistleblowing and Build Support for the Protection of Whistleblowers? (Section 4 – Lesson 7, Annex 1 – Principles 9, 12, 13 and 14)

Consider how public engagement already happens and who is best placed to deliver the message.

Institutional support for whistleblowing and public engagement can build into the process of developing and implementing legal and institutional reforms. Bringing together national stakeholders (e.g., authorities, business groups, unions, NGOs, judges, whistleblowers and academics) and working with them to understand the challenges and develop effective responses is a strong basis for future engagement (best practice principles 13 and 14).

Public campaigns and targeted awareness raising in different sectors and industries and to workers at different levels is also helpful. Unions and business associations, such as chambers of commerce, can play an active role in supporting the implementation of protections and explaining rights and duties.<sup>84</sup>

#### South Africa: An example of how a stakeholder is addressing whistleblowing

The Ethics Institute of South Africa ([www.tei.org.za](http://www.tei.org.za)) is an independent public body that focuses on good governance and ethical training in the public and private sector. It has recently produced two handbooks: *The Whistleblowing First Responder Guide* and *The Whistleblowing Non-Retaliation Toolkit*.

Civil society organizations around the world provide legal and practical support to help whistleblowers and citizens who disclose wrongdoing. In Chile, for example, the Fundación Ciudadano Inteligente launched a public campaign against corruption and set up a public reporting platform: ChileLeaks. They collaborate with Transparency International Chile, which runs an independent legal advice service for whistleblowers and works with the Chilean government to address disclosures.<sup>85</sup>

## Step 8: How to Monitor and Evaluate Law and Practice? (Annex 1 – Principles 5 and 12)

Below is a selection of indicators generally recommended for evaluating the effectiveness of institutional whistleblowing channels (organizational and regulatory bodies) and for evaluating the effectiveness of public and government oversight. These are included for general guidance only.

### Institutional Channels

- number of reports of wrongdoing received
- nature and seriousness of the wrongdoing reported
- time taken from disclosure receipt to completion (i.e., assessment, investigation and action)
- effectiveness of any corrective action taken
- whistleblower feedback — satisfaction with case management and outcomes
- outcomes for whistleblowers:
  - proportion who leave their organization after reporting/reasons
  - number seeking support from retaliation/type of retaliation
  - number taking a legal claim/basis for claim
- staff surveys to reveal overall confidence in the channels
- any adverse events where the underlying issue should have been picked up earlier

### Indicators for Wider Public and Government Oversight

- information about organizational and regulatory channels — as per above, anonymized, and made publicly available via annual reports and dedicated reports
- work-related research data on trust, confidence, and use of internal or regulatory whistleblowing channels
- public polls/survey data on public attitudes and experiences
- court case and tribunal decisions
- independent research

The lack of publicly available data for whistleblower legal claims and disclosures statistics is a significant impediment to improving on current practice and legal requirements and measuring the effectiveness of whistleblower laws as revealed in the IBA-GAP report. To ensure maximum transparency, mandatory reporting on legal and tribunal decisions should be considered.

“

Consider how to evaluate the effectiveness of whistleblower laws and practices, and the type of information needed to measure it. “What remains for policymakers is not to justify the economic case, but rather to determine how such systems can be effectively and efficiently designed to realise the full potential for citizens across the EU.””

– Rossi, L. et al. (2017). *Estimating the economic benefits of whistleblower protection in public procurement: final report*, at page 10 (see note 10)

## SECTION 6: CONCLUSION

The fact that so many organizations and institutions around the world rely on information from whistleblowers, and that encouraging people to speak up is a proven method to gain actionable information about wrongdoing means that the call for commensurate whistleblower protections is only likely to get louder.

This Report was developed to provide users with the information and knowledge related to the value and importance of whistleblowing as a social good, an overview of the current state of play in whistleblower protections and practices around the world, and some of the key policy and implementation considerations to help ensure that local frameworks are effective and properly adapted to local needs.

For whistleblower protection laws to help achieve the social and institutional aims of preventing and detecting corruption, abuse and exploitation, people need to know that laws and practices exist and are working effectively — and this requires continuous accountability, transparency, action and education.

PAOs and professional accountants have a key role to play in promoting high-quality whistleblower protection frameworks and the adoption of effective whistleblower channels across organizations, governments, and not-for-profit entities as an integral element to promote ethical and responsible business. With this Report, IFAC and CPA Canada call on the accountancy profession to be leaders on this crucial issue.



# ANNEX 1: COMPENDIUM OF 14 BEST PRACTICE PRINCIPLES\*

## 1. Wide personal scope, beyond the workplace

- a. Broad coverage for those in working relationships and associated with them, including unions and NGOs, as well as “any person” who discloses wrongdoing.

## 2. Wide subject matter scope, with no loopholes

- a. Broad range of public interest information qualifying for protection.
- b. “Duty” speech protected; i.e., protection for those who disclose concerns about wrongdoing as part of their job and/or professional responsibilities.
- c. Right to refuse to violate the law.

## 3. Choice of protected channels for disclosure

- a. To **employer/responsible “person”** (no legal thresholds, as such disclosures do not breach organizational confidentiality).
- b. To **regulatory authorities, ombuds, government departments, law enforcement etc.** fully protected (low legal thresholds as such authorities are mandated to investigate relevant issues and handle reportable information).
- c. To **parliamentarians, to the public** either directly or via the media protected (thresholds to address any risks to third-party rights in the disclosure, such as patient confidentiality).

## 4. Range of protections/remedies

- a. Confidentiality of identity guaranteed:
  - i. extends to how information handled and investigated
  - ii. can only be disclosed by express consent or court order
- b. Anonymous whistleblowers protected if identity becomes known or is suspected.
- c. Broad range of protections against employment detriment, including failure to promote, bullying and harassment, etc.
- d. Access to employment remedies (including transfers, new job, etc.) by mutual consent.
- e. Protections against physical harm and threats of harm.
- f. Immunities against civil or criminal liability with respect to disclosure and information, including gathering or retaining information related to the wrongdoing.
- g. Other forms of legal harassment regulated, including:
  - i. Prohibiting non-disclosure agreements or gagging clauses which are broad or vague, limit or purport in any way to dissuade or prevent the disclosure of public interest information.
  - ii. Protection against abusive lawsuits designed to silence critical speech (i.e., Strategic Lawsuits Against Public Participation (SLAPPs)).
- h. Full compensation designed to make a whistleblower “whole,” including but not limited to loss of past and future earnings, compensation for health and psychosocial damage, coverage for legal fees, etc.

\* The Compendium of 14 Best Practice Principles in Annex 1 is adapted from the IBA-GAP report and the findings in this Report.

**5. Credible corrective action**

- a. Whistleblowers should be supported to participate in the process of addressing the wrongdoing by receiving progress reports, contributing to the record or assessing whether there has been a good faith resolution.
- b. There should be a public record of the resolution, including observations from the whistleblower.

**6. Access to independent adjudication/court**

- a. Ensuring whistleblowers have a right to due process that is free from institutional conflicts of interest and that provides access to a court.
- b. Voluntary option for alternative dispute resolution with an independent party by mutual consent.
- c. Realistic time frames to act on rights.

**7. Burdens of proof**

- a. Reverse burden of proof such that once the whistleblower shows a prima facie claim of retaliation, the burden shifts to the employer or alleged retaliator to show that action was wholly unrelated to the disclosure and independently fair.

**8. Interim relief**

- a. Rapid access to administrative or other protective measures and injunctive relief to prevent retaliation or unfair treatment at an early stage and stop any alleged unfair action being taken.

**9. Independent legal advice, financial assistance and access to other support services**

- a. Including early independent confidential (privileged) advice to support the responsible disclosure of information.
- b. Legal aid in cases of claims of retaliation.
- c. Access to psychosocial support.

**10. Cross-border protections**

- a. Ensuring protected disclosures of wrongdoing not limited by geography.
- b. Inter-governmental agreements between competent authorities with respect to sharing information, protecting whistleblowers and investigating wrongdoing.



## 11. Training

- a. Judges, prosecutors and other adjudicative decision-makers with a particular focus on the public interest aspect of cases.
- b. Within organizations at all levels tailored to role in receiving disclosures and protecting whistleblowers, including:
  - i. Security in handling, assessing and sharing information.
  - ii. Working with whistleblowers and providing feedback.
  - iii. Assessing risk to whistleblowers and planning actions to mitigate.
  - iv. Investigations and reporting.
- c. General and regular information to management, staff, external stakeholders on whistleblowing arrangements and protections available provided by organizations, competent authorities, government departments, etc.

## 12. Transparency and review

- a. Regular and easy access to information on how organization/authorities handle disclosures (arrangements in place, numbers of disclosures, type, outcomes, etc.).
- b. Open access to relevant tribunal and court hearings and reasoned decisions.
- c. Regular government review of law based on consultation and evidence.

## 13. Improving the cultural perception of whistleblowers

- a. Public information campaigns on value and importance of whistleblowing as a social good – government and civil society separately and together (includes trade organizations and professional bodies, unions, NGOs, etc.).

## 14. Supporting civil society and dedicated whistleblower protection NGOs

- a. Ensuring laws and policies support and protect a free and independent media with access to funding.
- b. Ensuring laws and policies support and protect an active, independent civil society sector with access to funding.

## ENDNOTES

- <sup>1</sup> A 2013 study of those seeking advice about whistleblowing conducted by the University of Greenwich and Public Concern at Work (now called Protect), revealed that 83 per cent raised their concern at work once or twice, and only three per cent went on to raise it four times. Vandekerckhove, W., James, C., & West, F. (2013). *Whistleblowing – the inside story – a study of the experiences of 1,000 whistleblowers*. University of Greenwich. <https://gala.gre.ac.uk/id/eprint/10296>.
- <sup>2</sup> The Global Corruption Barometer of citizen's views found that on average across 88 countries only 45 per cent agreed that it was socially acceptable to report corruption – see Transparency International (TI). (2017). *Global Corruption Barometer*. <https://www.transparency.org/en/gcb/global/global-corruption-barometer-2017>. Regional polling in both the Pacific and Asia regions revealed that among those who experience corruption (being offered or having to pay bribes in daily life), reporting levels remained low. This is despite the fact that on average across 17 Asia countries, 59 per cent believed that reporting corruption would lead to action notwithstanding the obstacles – see Transparency International (2020) *Global Corruption Barometer Asia 2020 Report*. <https://www.transparency.org/en/gcb/asia/asia-2020>. TI's Pacific 2021 Report found in 10 countries that only 13 per cent of those who experienced corruption reported it – see Transparency International. (2021). *Global Corruption Barometer Pacific 2021 Report on Citizens' Views and Experiences of Corruption*. <https://www.transparency.org/en/gcb/pacific/pacific-2021>. The European Commission study on citizen's views found that only one in 20 Europeans in the 27 EU countries had experienced or witnessed corruption (though in seven countries, it was one in 10), and of those, only 15 per cent reported it (i.e., two out of 10 persons who experienced corruption reported it). European Commission. (2022). *Corruption Report: Special Eurobarometer 523*. Directorate-General for Directorate-General for Migration and Home Affairs (DG HOME). <https://europa.eu/eurobarometer/surveys/detail/2658>.
- <sup>3</sup> Case studies are found in many research studies, including, for example, in Kenny, K. Prof (2019) *Whistleblowing: Toward a New Theory*. Boston: Harvard University Press. Kenny interviewed men and women who reported unethical and illegal conduct at major corporations in the run up to the 2008 financial crisis.
- <sup>4</sup> CPA Canada. Hernandez, J. and Laurie, M. (2021). *Governance of Anti-Corruption and Responsible Business: A Framework for Board of Directors*. Pg. 15. <https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/enterprise-risk-management/publications/anti-corruption-responsible-business-governance-framework>.
- <sup>5</sup> International Bar Association & Government Accountability Project. (2021) *Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation*. International Bar Association. Hereinafter "IBA-GAP report." <https://www.ibanet.org/article/EE76121D-1282-4A2E-946C-E2E059DD63DA>
- <sup>6</sup> Refer to note 4 and pages 8, 14 and 15 of the CPA Canada publication.
- <sup>7</sup> Stubben, S., & Welch, K. (2020). Evidence on the use and efficacy of internal whistleblowing systems. *Journal of Accounting Research*, 58(2), 473–518; Vandekerckhove, W., James, C., & West, F. (2013). Whistleblowing—the inside story. University of Greenwich. <https://gala.gre.ac.uk/id/eprint/10296/>
- <sup>8</sup> Devine, T., & Maassarani, T. F. (2011). *The corporate whistleblower's survival guide*. Berrett-Koehler; Heimstädt, M., & Dobusch, L. (2018). Politics of disclosure: Organizational transparency as multiactor negotiation. *Public Administration Review*, 78(5), 727–738; Su, X., & Xing, N. (2018). Institutional anticorruption in China: Effectiveness on bribery incidence. *Public Administration Review*, 79(4), 538–551.
- <sup>9</sup> Association of Certified Fraud Examiners (ACFE). (2022) *Occupational Fraud 2022: A Report to the Nations*. <https://legacy.acfe.com/report-to-the-nations/2022/> at p. 21. According to this report (p. 26), tips are the most common way (40 per cent via telephone hotline and 33 per cent via web-based/online form) that fraud schemes are detected. Therefore, an effective whistleblower hotline is a vital part of a comprehensive anti-fraud program (ACFE and the Institute of Internal Auditors. *Building a Best-In-Class Whistleblower Hotline Program*. May 2023. <https://www.acfe.com/about-the-acfe/newsroom-for-media/press-releases/press-release-detail?s=IIA-ACFE-Whistleblower-Hotline-Report>.)
- <sup>10</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Rossi, L., McGuinn, J., Fernandes, M. (2017). *Estimating the economic benefits of whistleblower protection in public procurement: final report*, Publications Office, at p. 14. <https://op.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1> .
- <sup>11</sup> Based on survey responses from 828 managers and those holding ethics-related positions in 14 national, provincial, and local agencies, drawn from a total pool of 118 agencies (and a total sample of 7,663 responses). Brown A.J. editor (2008). *Whistleblowing in the Australian Public Sector. Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organizations*, Australian National University E Press: Australia.
- <sup>12</sup> Research study involving 46 public, private, and not-for-profit sector organizations in Australia and New Zealand including 17,778 individuals. Brown A.J. editor (2018), *Whistleblowing: New Rules, New Policies, New Vision* (Work-in-progress results from the Whistling While They Work 2 Project, Brisbane: Griffith University, at p. 13).
- <sup>13</sup> *Ibid*, at p. 27.
- <sup>14</sup> *Ibid*, at p. 33-34.
- <sup>15</sup> *Ibid*, at p. 28.
- <sup>16</sup> Institute of Business Ethics (2021). *Ethics at Work: 2021 International survey of employees*. <https://www.ibe.org.uk/ethicsatwork2021.html>. An international survey of approximately 10,000 employees in 13 countries, see p. 18. This has been confirmed by numerous other studies.
- <sup>17</sup> International Organization for Standardization. (2019). *Whistleblowing Management Systems – Guidelines*. (ISO 37002). <https://committee.iso.org/sites/tc309/home/projects/published/iso-37002-whistleblowing-managem.html>.

- <sup>18</sup> In 2010 the Malawi Revenue Authority set up the Tip-Offs Anonymous Program to allow individuals to anonymously report instances of fraud, bribery, corruption and smuggling. People can report via a toll-free phone number, email or letter in English or Chichewa, and use an anonymous code. See [https://www.mra.mw/assets/upload/downloads/MRA\\_Tax\\_Update\\_Tip\\_Offs\\_Anonymous\\_Service.pdf](https://www.mra.mw/assets/upload/downloads/MRA_Tax_Update_Tip_Offs_Anonymous_Service.pdf).
- In 2013, the Austrian Federal Public Prosecutor's Office for Economic Crime and Corruption (WKStA) set up an anonymous "whistleblower website" to accept information relating to corruption and white-collar crime. People can set up an anonymous mailbox for investigators to communicate with them. See <https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21&c=-1&language=eng>.
- The Swiss Federal Audit Office accepts disclosures about wrongdoing in the federal administration. The Office received a total of 122 whistleblowing reports in 2017, a 36 per cent increase over the previous year. This is attributed to the introduction of an online platform for reporting irregularities and corruption anonymously. See [https://www.swissinfo.ch/eng/online-platform\\_swiss-whistleblower-alerts-increases-by-a-third/43925616](https://www.swissinfo.ch/eng/online-platform_swiss-whistleblower-alerts-increases-by-a-third/43925616).
- <sup>19</sup> U.S. Const. amend I. "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- <sup>20</sup> Subject to certain limited exceptions (e.g., related to aspects of national security) a public sector employer is prohibited from disciplining an employee for providing information to the media and has no right to inquire whether someone has been in touch with the media. Anyone who intentionally violates this prohibition may be fined or sentenced to imprisonment for no more than one year.
- <sup>21</sup> In 2019, there were 47 dedicated whistleblower laws worldwide. Iceland passed a new law in 2021, and 12 EU countries have now adopted whistleblower protection laws for the first time to comply with the EU Directive 2019/1937, and two are delayed in doing so. Thirteen EU Member States have reformed or replaced existing laws.
- <sup>22</sup> For a list of dedicated whistleblower protection laws by region (as of August 31, 2023) and selected resources to highlight and complement the information in the Report, refer to <https://whistleblowingnetwork.org/getmedia/594e5777-69a5-4d18-bb86-489823d5da76/List-of-Laws-and-Additional-Resources-FINAL-01-11-2023.aspx>
- <sup>23</sup> Minister Howlin. (2013, July 3). Publication of the Protected Disclosures Bill 2013 [press release]. Accessed at <https://merrionstreet.ie/en/category-index/public-service-transformation/oireachtas-reform/publication-of-the-protected-disclosures-bill-2013.html>.
- <sup>24</sup> As of August 31, 2023, 25 out of 27 EU Member States have adopted new laws or reformed their laws to comply with the (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. (Hereinafter the "EU Directive 2019/1937") <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1937>.
- <sup>25</sup> The Council of Europe has 46 member states and six observer states, including the U.S., Canada and Japan.
- <sup>26</sup> Council of Europe (2014). Recommendation CM/Rec(2014)7 on the protection of whistleblowers. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c5ea5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5ea5); For Explanatory Memorandum of the 22 Principles, see European Committee on Legal Co-operation (CDCJ). (2014). *Protection of Whistleblowers*. <https://rm.coe.int/16807096c7>; For evaluation impact, see European Committee on Legal Co-operation (CDCJ). (2022). *Evaluation Report on CM/Rec(2014)7 of the Committee of Ministers to member states*. <https://rm.coe.int/cdcj-2022-01-evaluation-report-on-recommendation-cmrec-2014-7p/1680a6fee1>.
- <sup>27</sup> See European Commission website for detail on the background and substance of EU Directive 2019/1937 at [https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/protection-whistleblowers\\_en](https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/protection-whistleblowers_en).
- <sup>28</sup> See the [EU Whistleblowing Monitor](#) for the latest updates on transposition.
- <sup>29</sup> *Guja v. Moldova* [GC] no. 14277/04, ECHR 2008. <https://hudoc.echr.coe.int/#/%22fulltext%22:%22%20CASE%200F%20GUJA%20v.%20MOLDOVA%22%22,%22documentcollectionid%22:%22%20GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-85016%22>; *Halet v. Luxembourg* [GC] no. 21884/18, ECHR 2023. <https://hudoc.echr.coe.int/#/%22fulltext%22:%22%20Halet%20v.%20Luxembourg%22%22,%22documentcollectionid%22:%22%20GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-223259%22>.
- <sup>30</sup> See Organisation for Economic Co-operation and Development (OECD). (2012) *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*. G20 Anti-Corruption Action Plan – Protection of Whistleblowers. <https://www.oecd.org/corruption/48972967.pdf>
- <sup>31</sup> OECD. 2021 *OECD Anti-Bribery Recommendation* (26 November 2021). <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm#:~:text=include%20extensive%20provisions%20to%20ensure,prevent%20and%20detect%20foreign%20bribery>.
- <sup>32</sup> See OECD. (2021). Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.
- <sup>33</sup> OECD, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009). Annex II B., Actions by Business Organisations and Professional Associations. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378#mainText>.
- <sup>34</sup> See United Nations Office on Drugs and Crime (UNODC). (2015). *Resource Guide on Good Practices in the Protection of Reporting Persons*. United Nations. [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf).
- <sup>35</sup> UNODC, 2004, [United Nations Convention Against Corruption](#) (31 October 2003), Articles 32 and 33.
- <sup>36</sup> The Inter-American Convention against Corruption was ratified by 29 countries in Latin and South America, including the United States and Canada. <http://www.oas.org/juridico/english/treaties/b-58.html>.
- <sup>37</sup> Organization of American States (OAS). (2004). *Model Law Protecting Freedom of Expression Against Corruption*. [http://www.oas.org/juridico/english/model\\_law\\_whistle.htm](http://www.oas.org/juridico/english/model_law_whistle.htm); OAS. (2013). *Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses* [http://www.oas.org/juridico/english/law\\_reporting.htm](http://www.oas.org/juridico/english/law_reporting.htm).
- <sup>38</sup> The Protocol commits 13 African countries to protect individuals who report acts of corruption. [https://www.sadc.int/sites/default/files/2021-11/Protocol\\_Against\\_Corruption2001.pdf](https://www.sadc.int/sites/default/files/2021-11/Protocol_Against_Corruption2001.pdf).

- <sup>39</sup> Thirty-one African states ratified this Convention which requires them to adopt measures “to ensure citizens report instances of corruption without fear of consequent reprisal.” [https://au.int/sites/default/files/treaties/36382-treaty-0028\\_-\\_african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_e.pdf](https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf).
- <sup>40</sup> See the Action Plan at <https://www.oecd.org/daf/anti-bribery/anti-corruption-initiative-asia-pacific-action-plan.pdf> and recent activities including a webinar on whistleblower reports and protection can be found on the OECD website at <https://www.oecd.org/corruption/anti-corruption-initiative-for-asia-pacific.htm>.
- <sup>41</sup> Teh, K. & Wong, C. (2022, January 4). *Integrity is key: Hong Kong's new Corporate Governance Code mandates that issuers establish anti-corruption and whistleblowing policies*. Asialaw [online]. <https://www.asialaw.com/NewsAndAnalysis/integrity-is-key-hong-kongs-new-corporate-governance-code-mandates-that-issuers/Index/1190>.
- <sup>42</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S. Code § 78u-6 (2010) - Securities whistleblower incentives and protection; See also U.S. SEC Office of the Whistleblower at <https://www.sec.gov/whistleblower>.
- <sup>43</sup> The Federal False Claims Act, 31 U.S.C. § 3729 et seq., was first enacted in 1863 and amended in 1980s. (See <https://www.justice.gov/civil/false-claims-act>) There are also many state and local false claims acts.
- <sup>44</sup> See Senator Grassley press release 02.08.2023 at <https://www.grassley.senate.gov/news/news-releases/more-than-72-billion-returned-to-taxpayers-under-grassley-law-that-targets-fraudulent-government-payments#:~:text=Since%20it%20was%20modernized%20and,%20and%20abuse%20of%20taxpayer%20money>.
- <sup>45</sup> Some programs are based on “proceeds” and others on the penalty imposed or a fixed amount. For more information on incentive programs around the world, see Vandekerckhove, Wim et al. (2018) What do we know about rewards for whistleblowers? at [https://www.researchgate.net/publication/371760870\\_What\\_do\\_we\\_know\\_about\\_rewards\\_for\\_whistleblowers](https://www.researchgate.net/publication/371760870_What_do_we_know_about_rewards_for_whistleblowers).
- <sup>46</sup> The US SEC issued the largest-ever whistleblower award of nearly \$279 million to a whistleblower whose information and assistance led to the successful enforcement of SEC and related actions. This is the highest award in the SEC’s whistleblower program’s history, more than doubling the \$114 million whistleblower award the SEC issued in October 2020 (May 5, 2023). <https://www.sec.gov/news/press-release/2023-89>. The award issued stemmed from a bribery case against Swedish telecommunications company Ericsson over allegations in 2019 that it conspired to make illegal payments to win business in five countries (*Reuters, Tipster on Ericsson won SEC's largest-ever whistleblower award of \$279 million, Wall Street Journal reports*. May 26, 2023. <https://www.reuters.com/business/media-telecom/tipster-ericsson-won-secs-largest-ever-whistleblower-award-279-mln-wsj-2023-05-26/>.)
- <sup>47</sup> For more information on rewards see Nyneröd, T. Spagnolo, G. (2021). “Myths and numbers on whistleblower rewards,” in *Regulation and Governance*, 15(1), 82-97. Working paper version available for download. ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3100754](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3100754)); Spagnolo, G. Nyneröd, T. (2021). “Financial Incentives to whistleblowers: a short survey.” *Cambridge Handbook of Compliance*. Sokol, D., van Rooij, B. (Eds). Cambridge University Press. Working paper version available for download. (<https://ideas.repec.org/p/hhs/hasite/0050.html>); Nyneröd, T. Spagnolo, G. (2021). “A fresh look at whistleblowers rewards” in *Journal of Governance and Regulation*, Volume 10, Issue 4, Special Issue, 2021. And for more information about the need to reform the U.S. reward system, see Platt, A. (2022) “The Whistleblower Industrial Complex” *Yale Journal of Regulation*, Vol. 40, Issue 2. Download available at <https://www.yalejreg.com/print/the-whistleblower-industrial-complex/>.
- <sup>48</sup> The Compendium of 14 Best Practice Principles in Annex 1 is adapted from the IBA-GAP report and the findings in this Report.
- <sup>49</sup> U.S. *National Defense Authorization Act (NDAA), Sarbanes-Oxley Act (SOX), Whistleblower Protection Act (WPA)*. A major step in whistleblowing protection laws came with provisions in the SOX Act of 2002 – a law passed by the U.S. Congress responding to corporate failures (e.g., Enron and WorldCom) and fraud that resulted in substantial financial losses to institutional and individual investors. The Act contains provisions affecting corporate governance, risk management, auditing, and financial reporting of public companies, including provisions intended to deter and punish corporate accounting fraud and corruption (<https://sarbanes-oxley-act.com/>).
- <sup>50</sup> United Kingdom. (1998). *Public Interest Disclosure Act*. s.43B. <https://www.legislation.gov.uk/ukpga/1998/23/contents>
- <sup>51</sup> Australia. (2019). *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act* (No. 10). [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=1120](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=1120)
- <sup>52</sup> Ghana. (2006). *Whistleblower Protection Act (WPA)*, s. 12. [https://www.lawsghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/WHISTLEBLOWER%20ACT,%202006%20\(ACT%20720\)/163](https://www.lawsghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/WHISTLEBLOWER%20ACT,%202006%20(ACT%20720)/163).
- <sup>53</sup> Uganda. (2010) *Whistleblower Protection Act (WPA)*, sections 3 and 4. [https://www.igg.go.ug/media/files/publications/Whistle\\_blowers\\_Act.pdf](https://www.igg.go.ug/media/files/publications/Whistle_blowers_Act.pdf)
- <sup>54</sup> See article on the decision from Protect – the UK’s whistleblower charity at <https://protect-advice.org.uk/whistleblowing-charity-protect-welcomes-supreme-court-decision-on-protection-for-judges/>.
- <sup>55</sup> EU Directive 2019/1937, Article 4: Personal Scope.
- <sup>56</sup> France. (2022) *Loi n° 2022-401 visant à améliorer la protection des lanceurs d’alerte*. Article 2. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388745/>.
- <sup>57</sup> See Transparency International Knowledge Hub. (2023). *Physical protection mechanisms for people who report corruption* [Briefing Paper]. <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Physical-protection-for-people-who-report-corruption-revised.pdf>.
- <sup>58</sup> United Kingdom. (1998). *Public Interest Disclosure Act*. section 43J <https://www.legislation.gov.uk/ukpga/1998/23/contents>.
- <sup>59</sup> U.S. SEC (2022 amended) Commission Rules - Securities Whistleblower Incentives and Protections (Commission Rule 21F-17(a). <https://www.sec.gov/files/amended-whistleblower-rules-2022.pdf>.
- <sup>60</sup> Ireland (2014 am.2022) *Protected Disclosure Act*. See annotated law <https://revisedacts.lawreform.ie/eli/2014/act/14/section/18/revised/en/html>.
- <sup>61</sup> France. (2022). *Loi n° 2022-401 visant à améliorer la protection des lanceurs d’alerte*. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388745/>.

- <sup>62</sup> Open Society Foundations, (2013). The Global Principles on National Security and the Right to Information (Tshwane Principles) <https://www.justiceinitiative.org/publications/tshwane-principles-national-security-and-right-information-overview-15-points>.
- <sup>63</sup> Jamaica (2011) *Protected Disclosure Act*. Section 15. <https://integrity.gov.jm/sites/default/files/TheProtectedDisclosuresAct2011.pdf>.
- <sup>64</sup> The EU Directive 2019/1937 provides immunity from civil and criminal liability so long as the whistleblower has not committed a “self-standing” criminal offence in acquiring or accessing the information. This has been criticized for being too vague.
- <sup>65</sup> For additional information, refer to the following resources: [IESBA-NOCLAR-Fact-Sheet](#), [IESBA-Responding-to-NOCLAR-At-a-Glance](#) and [IESBA Staff Questions and Answers—Responding to Non-Compliance with Laws & Regulations](#).
- <sup>66</sup> The U.S. standard refines the concept in two ways. It sets a low threshold for the employee’s burden of establishing a basic (*prima facie*) case that whistleblowing was “a contributing factor” of the challenged action. By contrast, there is a high standard for the employer’s reverse burden, which must be proved by “clear and convincing evidence.” See Tom Devine (2013). “The Whistleblower Protection Act Burdens of Proof: Ground rules for Credible Free Speech Rights” 2 E-Journal of International and Comparative Labor Studies 137 (Sept-Oct. 2013).
- <sup>67</sup> G20.(2011). *Compendium of Best Practices and Guiding Principles for Legislation on the Protection of Whistleblowers*. <https://www.oecd.org/corruption/48972967.pdf>.
- <sup>68</sup> See Article 2 (h) of the OAS Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses (2013) [http://www.oas.org/juridico/english/law\\_reporting.htm](http://www.oas.org/juridico/english/law_reporting.htm).
- <sup>69</sup> See EU Directive 2019/1937, Recital 32 and Article 6 (1) (a).
- <sup>70</sup> See Kenny, K. Prof. at note 3; see also the [Tech Workers Handbook](#) – a resource for those working in the tech industry containing examples and the stories of whistleblowers; and case studies of those supported by the [Plateforme des lanceurs d’alerte en Afrique](#) (PPLAAF).
- <sup>71</sup> See recognized national non-profit and pro-bono legal advice and support centers specializing in whistleblower protection on the Whistleblowing International Network (WIN) website at <https://whistleblowingnetwork.org/Membership/Our-Members>. Two of these are international organizations: [The Signals Network](#) and [PPLAAF](#).
- <sup>72</sup> See the business integrity and support programs run by [Protect](#) in the U.K. and [Transparency International Ireland](#).
- <sup>73</sup> Lithuania and Latvia provide legal aid to whistleblowers.
- <sup>74</sup> For the Office of the Special Counsel see <https://osc.gov/>.
- <sup>75</sup> For the Dutch Whistleblowers Authority, see <https://www.huisvoorklokkenluiders.nl/english>; for the Korean Anti-Corruption and Civil Rights Commission, see <https://www.acrc.go.kr/>; and for the New Zealand Ombudsman, see <https://www.ombudsman.parliament.nz/what-ombudsman-can-help>; for the Slovenian Anti-Corruption Authority, see <https://www.kpk-rs.si/en/>.
- <sup>76</sup> See ÚOO and NEIWA. (2022). *Who Protects Whistleblowers in Europe? Members of the Network of European Integrity and Whistleblowing Authorities and Their Competences*. <https://www.huisvoorklokkenluiders.nl/samenwerking/documenten/rapporten/2022/12/31/who-protects-whistleblowers-in-europe>.
- <sup>77</sup> Ghana Anti-Corruption Coalition. (2010). *A Guide to Whistleblowing in Ghana*. British High Commission in Accra. <https://docplayer.net/3801113-A-guide-to-whistleblowing-in-ghana.html>.
- <sup>78</sup> For more information, see note 17, *ISO Whistleblowing Management Systems – Guidelines*.
- <sup>79</sup> EU Directive 2019/1937, Article 6 (2): Conditions for protection of reporting persons.
- <sup>80</sup> Asia Pacific Forum. (2015). *Undertaking Effective Investigations: A Guide for National Human Rights Institutions* [Revised 2018]. <https://www.asiapacificforum.net/resources/guide-to-effective-investigations/> The Guide is also available Arabic, English and Mongolian.
- <sup>81</sup> UNODC & IOC. (2019). *Reporting Mechanisms in Sport: Practical Guide for Development and Implementation*. Vienna. [https://www.unodc.org/documents/corruption/Publications/2019/19-09580\\_Reporting\\_Mechanisms\\_in\\_Sport\\_ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2019/19-09580_Reporting_Mechanisms_in_Sport_ebook.pdf).
- <sup>82</sup> Find more details at <https://www.oznamovatelia.sk/en/o-nas/>.
- <sup>83</sup> Kenny, K. et al. (no date). *Post disclosure Survival Strategies: Transforming Whistleblower Experiences*. <https://www.whistleblowingimpact.org/topics/post-disclosure-survival-strategies/publications/>.
- <sup>84</sup> See seminar [Whistle-blowers: Love Them or Hate Them, But You Still Need Them](#) organised by the American Chambers of Commerce India in 2022; International Chambers of Commerce (ICC). (2022). *Guidelines on Whistleblowing*. <https://iccwbo.org/news-publications/policies-reports/icc-2022-guidelines-on-whistleblowing/>.
- <sup>85</sup> See Ciudadano Inteligente at <https://ciudadaniai.org/index> and ChileLeaks at <https://chileleaks.org/index.html>. See Transparency International Chile at <https://www.chiletransparente.cl/> and their Advocacy and Legal Advice Center at <https://denunciacorrupcion.cl/> <https://www.chiletransparente.cl/>.

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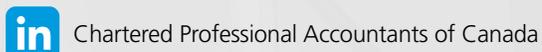
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