

WHISTLE BLOWERS



“DO YOU HAVE A WHISTLE BLOWING FACILITY & IF SO, IS IT INDEPENDENT?”

WHISTLE BLOWING - TIPS

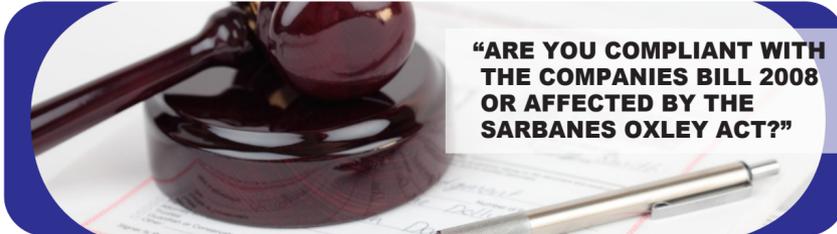
Recommendations in the PricewaterhouseCoopers 4th Global Economic Survey (2007) under the section “Whistle Blowing programmes: best practice tips” are as follows –

- 1) Safeguard employees who report misconduct against any form of retaliation – allow for anonymous report.
- 2) Make certain employees report incidents outside their chain of command – avoiding their supervisor/department head/division leader, by using a helpline, email or mail box.
- 3) Maintain confidentiality to the fullest extent possible.
- 4) Ensure that any hotline/helpline is both toll-free and includes as many language translations as appropriate for a company with global operations.
- 5) Establish working relationships and protocols for various departments within the organisation prior to issues surfacing; for example, Human Resources or Benefits to address personnel issues and Security or Risk Management for more serious issues such as suspected fraud.
- 6) Include controls for targeting certain situations that may require immediate steps to prevent further risk or damage.
- 7) Provide clear governance expectations about how matters will be reported to the ultimate governing authority, presumably the Board of Directors, or sub-committee.
- 8) Formalize processes for recording and tracking reported issues and incidents.
- 9) Communicate information about the reporting and investigation process, how it operates, what kinds of issues have arisen and how they were dealt with.
- 10) Establish communication channels not only for reporting misconduct, but also for asking questions and receiving guidance.

INDEPENDENCE

The importance of the independence of whistle blowing lines is also highlighted in terms of the Sarbanes Oxley Act USA (2002) which came into effect after the Enron - Arthur Anderson debacle in the USA.

It was designed to promote auditor independence by prohibiting fundamental conflicts of interest in the profession. It prohibits accounting firms from providing certain consulting services to companies whose books they audit.



“ARE YOU COMPLIANT WITH THE COMPANIES BILL 2008 OR AFFECTED BY THE SARBANES OXLEY ACT?”

“Whistle blowing” as a means of promoting and supporting Corporate Governance in the workplace, continues to gain momentum all over the world.

There are countless high profile examples of fraud which have been exposed by famous, and, more importantly, anonymous whistle blowers.

The importance of Corporate Governance has been highlighted in South Africa, in particular, in the King II and King III Reports, the Protected Disclosures Act, the Labour Relations Act and the much publicised new Companies Bill (2008) which is due to become law later this year.

Section 159 states that:

A public company and state owned company must directly or indirectly:

- a) establish and maintain a system to receive disclosures (contemplated in this section) confidentially and act on them, and
- b) routinely publicize the availability of that system (to the categories of persons contemplated...)

DIMENSIONS OF CORRUPTION

Corruption takes various forms in the public service and elsewhere in society; the following are examples of different types of corruption:-



BRIBERY

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of employees/employers. This benefit may accrue to a public servant, another person or an entity. A variation of this manifestation occurs where an individual is offered, promised or given a benefit that improperly affects the actions or decision of that person. *[Example: A traffic officer accepts a cash payment in order not to issue a speeding fine.]*



EMBEZZLEMENT

This involves theft of resources by persons entrusted with the authority and control of such resources. *[Example: Hospital staff member steals medicine and, in turn, sells this to private pharmacists.]*



FRAUD

This involves actions or behaviour by a person or entity that entices others into providing a benefit that would not normally accrue to that person or entity. *[Example: A clerk registers a fictitious employee in order to collect the salary of that fictitious employee.]*



EXTORTION

This involves coercing a person or entity to provide benefit to a person or an entity in exchange for acting (or failing to act) in a particular manner. *[Example: An official threatens to close a restaurant on the basis of fabricated health transgressions unless the owner provides the official with regular meals.]*



ABUSE OF POWER

This involves an individual using his or her vested authority to improperly benefit another person or entity (or using vested authority to improperly discriminate against another person or entity.) *[Example: During a tendering process, but before actual selection of a successful contractor, the head of department expresses his or her wish to see the contract awarded to a specific person.]*



CONFLICT OF INTEREST

This involves an individual acting, or failing to act, on a matter where that person has an interest or another person or entity that has a relationship with that person has an interest. *[Example: A purchasing agent considers tenders for a contract and awards the tender to a company of which his or her relation is a director.]*



ABUSE OF PRIVILEGED INFORMATION

This involves the use of privileged information and knowledge that a person possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit for him or herself. *[Example: An official has, as a result of his or her office, knowledge of residential areas that are to be rezoned as business areas, and then informs friends and family to acquire the residential property with a view to selling these as business properties at a premium].*



FAVOURITISM

This involves the provision of a service or resources according to personal affiliation (for example ethnic or religious) of an individual. *[Example: A buyer ensures that only persons from the same ethnic group are successful in tendering for the supply of food.]*



NEPOTISM

This involves a person ensuring that family members are appointed to positions, or that family members receive contracts. *[Example: An HR official appoints his or her sister's child to a position when a more suitable candidate has applied for the position.]*

(The above illustrations of the manifestations of corruption are by no means complete or exhaustive.)

Corruption appears in various permutations and degrees of intensity, and a well installed whistle blowing facility, supported by an active “zero tolerance” culture within management, is one of the keys to exposing it early.

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