Don’t make whistle blowing a get rich quick scheme

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Whistle Blowers

Whistle Blowers. South Africa’s largest independent whistle blowing service provider, is receiving a growing number of calls from companies seeking advice on the pros and cons with regard to the offering of rewards for information that leads to a fraud conviction.

A worried Dale Horne, who heads up the operation, believes this is because of publicity surrounding massive pay outs running into hundreds of millions of dollars in America where it is encouraged.

Bradley Birkenfeld, and ex banker who reported his bosses at UBS for helping US clients to hide money in Swiss accounts received $104 million and Cheryl Rickard, a former employee of drug maker Clasico Smith Klein, who alleged that there were manufacturing faults at one of the company’s plants, collected $66 million. A group of employees at Pfizer netted $102 million in September 2009 for exposing the illegal promotion of the arthritis drug Bextra while Kyle Lagow pocketed $34.5 million for providing information about alleged underwriting and mortgage fraud at a Bank of America subsidiary.

But Horne says that local companies considering going this route, albeit on a far smaller scale, needed to think carefully about the potential consequences for both themselves and their employees.

He explains that America’s much debated Dodd Frank Act, which targets corruption in the financial industry in particular, contains a whistle blowing clause that enables the Securities and Exchange Commission to pay out a reward equivalent to between 10% and 30% of the money recovered should it obtain a conviction with sanctions exceeding $1 million.

Horne believes that whistle blowing is the best and most effective means of rooting out wrongdoing in the corporate domain – a fact underscored by the 2014 Report to the Nations on Occupational Fraud and Abuse carried out by the Association of Certified Fraud Examiners (ACFE). Based on 34 615 cases spread across America, Europe, Asia, Canada, Latin America, the Middle East and Africa (including South Africa) from October 2013 to December 2013, this report indicated that over 42 percent of all cases were the result of a tip. But less than 11 percent of companies provided rewards for whistle blowers.

But he doubts whether rewards contribute significantly towards this.

The crux is that companies need to closely examine the motives of those reporting wrong doing in exchange for cash. There is always the chance of a get rich quick scheme that could backfire, he warns.

“The company intending to pay rewards must consider elements such as how the informer would communicate the information, who would the information be communicated to, how he will be guaranteed protection, how the value of the reward will be determined, the grounds on which rewards will be paid out, how the rewards would be paid, for example, because it could take some years before a particular matter to be finalised. Should a company be satisfied with answers to these questions favourably, then this should be operated separately from any official whistle blowing facility,” Horne says that Whistle Blowers does not pay for information. He warns that any investigations that include information for reward should be handled by a registered investigation body.

Those administering internal whistle blowing programmes should not also administer the reward scheme, as this creates a conflict of interest. If rewards are offered, these should be totally independently administered from the management of the whistle blowing program."

The good news, according to Horne, is that most people who do blow the whistle on corruption don’t do this for a reward. The AFI study noted that at any company, 25 percent of employees are dishonest, 25 percent are honest and the remaining 50 percent could go either way depending on the culture of the organisation. Therefore Whistle Blowers concentrates on the aspects of ethics and bringing the majority into the crime fighting fold.

“Our experience shows that people don’t come forward to give information for money generally but because it’s the right thing to do. Ultimately the aim should be to create a culture of honesty within an organisation. We encourage an ethical solution to a problem where employees speak up in order to protect their employment and their companies,” he says.

Trust rather than money, he emphasises, is actually the chief determinant of whether an employee will blow the whistle.

“Whistle Blowers has systems in place to protect a whistle blower’s identity. “Our primary focus is to provide absolute security so whistle blowers keep coming back and don’t fear reprisals. We believe that companies need to focus on protection of identities rather than on providing rewards,” he says.

Horne cautions that there is no formal legislation in South Africa that protects the identity of someone providing information for a reward.

Instead, legislation such as the Protected Disclosures Act only provides for legal protection of whistle blowers provided that a disclosure is made in good faith. If a whistle blower accepts a reward, he waives his right to protection with potentially serious consequences.

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