

## **ICC Guidelines on Whistleblowing 2021**

### **I. Introduction**

The purpose of these Guidelines is to help Enterprises establish and implement internal whistleblowing systems, by offering practical guidance that will serve as a useful point of reference. These Guidelines are based on the broad experience and practice of ICC member enterprises across a wide range of sectors and jurisdictions worldwide. They have been aligned with key international legal instruments as well as global standards and best practice for whistleblowing system.

Whistleblowing is the act of reporting suspected or actual actions or omissions that can cause harm<sup>1</sup>. Unaddressed, such harm can destroy shareholder value, threaten countries' development, endanger employment opportunities, and erode the trust in the Enterprise's governance.

Employees of an Enterprise and those in close contact with them (including third parties) are often the first to recognize a potential wrongdoing or risk of harm. They are therefore valuable sources of information and well placed to support resolving a potential problem early on before it causes material damage to the Enterprise or other harm.

It is therefore in the interest of a responsible Enterprise to encourage whistleblowing as part of their Ethics & Compliance program and to set up systems to support whistleblowing. A well-functioning and trusted whistleblowing system supports Enterprises' ambitions for sound risk management, internal control and effective compliance, and promotes a culture of transparency, integrity and accountability.

While the term "whistleblower" can awake different feelings in different countries, it has today become an internationally recognized term to denote persons who report suspected or actual wrongdoings. Therefore, whistleblowing can in corporate context range from raising concerns, speaking up or submitting a confidential report via an Enterprises' whistleblowing channel.

Enterprises today are measured by how they deal with whistleblowers and how well they handle reports and concerns that are brought to their attention. The ICC Rules on Combating Corruption recommend that corporate compliance programs adopted by enterprises offer "channels to raise, in full confidentiality, concerns, seek advice or report in good faith established or soundly suspected violations without fear of retaliation or of discriminatory or disciplinary action. confidential channels to raise concerns, seek advice or report violations without fear of retaliation".

### **II. Definitions**

The following terms are used throughout these Guidelines:

- **Enterprise** means any person or entity, incorporated or not, engaged in business and other economic activities, whether or not organised for profit, including any entity controlled by a state or territorial subdivision thereof; it includes a parent and its controlled subsidiaries.
- **Whistleblower** means any person who reports a Wrongdoing.

---

<sup>1</sup> ISO 37002:2021, Whistleblowing management systems — Guidelines.

- **Retaliation** means any direct or indirect punishment, retribution or disadvantage, which is prompted by internal or external reporting, to the Whistleblower or the legal entity that the Whistleblower owns, works for, or is otherwise connected with in a work-related context.
- **Wrongdoing** includes action(s) or omission(s) that can cause harm. In a narrow sense it relates to breach of national or international law or legal obligations, fraud or corruption whereas in its broadest sense it includes misconduct of whatever kind in the context of the workplace, such as, but not limited to, the conflicts of interest, risk of harm to human rights, the environment or health and safety, harassment or discrimination in the workplace, or other breach of the code of conduct or the code of ethics, or any other integrity standard, of the Enterprise.
- **Whistleblower** means a person who reports a suspected or actual wrongdoing
- **Whistleblowing** is the act of reporting suspected or actual actions or omissions that can cause harm
- **Whistleblowing Management System** means the Enterprise's program, objectives, mechanisms, channels, policies and processes relating to Whistleblowing.

### III. Whistleblowing Management System

The purpose of a Whistleblowing Management System is to enable reporting through organized communication channels set out by the Enterprise to ensure that concerns of wrongdoing swiftly reach those closest to the source of the problem, most able to investigate and with powers to remedy it where possible.

Prior to introducing the Whistleblowing Management System, the Enterprise must ensure that its preferred system complies with applicable laws and regulations of the countries in which the Enterprise operate. In particular, local data protection and privacy regulation, employment laws and specific whistleblower regulation must be assessed.

The cultural environment in which the Whistleblowing Management System will operate, the context of the organisation and the governance of the Enterprise should guide the expectations, as well as set the boundaries of the system.

As confidentiality is the foundation of a trustworthy Whistleblowing Management System, it must be designed to ensure that the identity of the Whistleblower is not disclosed to anyone, without the explicit and informed consent of the Whistleblower, beyond the authorised personnel who are designated to receive or follow up on reports. This shall in general also apply to any other information from which the identity of the Whistleblower may be directly or indirectly deduced. Notwithstanding, the information may be disclosed where this is a mandatory obligation imposed by law. At times, the interests of the Whistleblower to remain confidential and the interest of the company to investigate must be weighted against each other.

Other matters that the individual Enterprise should evaluate, taking into account the applicable law of the countries in which a Whistleblowing Management System will operate and the company governance, is whether it desires that:

- reporting under the Whistleblowing Management System should be made compulsory or voluntary, and whether it should be incentivised e.g., by offering a reward
- reporting governance and investigation management should be centralized or decentralized
- reporting is allowed anonymously, and
- reporting by third parties and/or general public is enabled.

A well-managed Whistleblowing Management System is easy and safe to use and is embedded in the governance of the Enterprise.

#### **IV. Scope**

A Whistleblowing Management System should be designed to receive and handle reports about Wrongdoing, whether actual or potential, established or reasonably suspected.

When planning the Whistleblowing Management System, the Enterprise should define their expectations of what the Whistleblowing Management System should seek to achieve, what type of reports of Wrongdoing that it wants to have in a centrally managed channel, and which are the alternative channels for reporting other concerns, the resources and the qualifications required for receiving and managing reports, and how the Whistleblowing Managing System will be embedded in the company's overall governance and communicated.

The Whistleblowing Management System must be made available to all employees, and others under the direct economic influence of the Enterprise, in the countries where the Enterprise operate. Enterprises should consider opening their whistleblowing channels to their third parties, and if relevant, also beyond their circle of third parties to include potential victims of corporate harm. However, before enabling external parties to use the whistleblowing channels of the Enterprise, the Enterprise must consider whether and how protection can be afforded to such extended category of Whistleblowers.

The Enterprise should further consider whether the whistleblowing channels should be limited to reports of Wrongdoing or can also be used for asking questions or consult on compliance issues and/or alert the Enterprise to general risks of danger to health, safety or the environment. Note that whistleblowing channels are generally not suitable for dealing with emergencies.

#### **V. Non-retaliation**

It is paramount for the trust in the Whistleblowing Management System that the Enterprise does not tolerate any form of retaliation. In particular, the safety, the future employment, remuneration and career opportunities of the Whistleblower must not be impeded by the act of reporting.

Retaliation typically includes - and should therefore be safeguarded against - dismissal, suspension, disciplinary action, coercion, intimidation, harassment, discrimination, blacklisting, business boycotting, early termination or cancellation of a contract, withholding of payment, license or permit, loss of business, loss of income, or any other harm or victimization to be caused as a consequence of the reporting process. Retaliation can also be indirect by tacit tolerance by senior managers of the Enterprise. Non-retaliation does

not give immunity to disciplinary actions should the Whistleblower commit any offence, but it must be clear that any such consequences are not an act of retaliation.

It can also be necessary at times to extend the protection against retaliation to persons that have facilitated or supported the Whistleblower or the investigation such as witnesses, colleagues or relatives.

Where retaliation takes place by a third party or other external parties, the Enterprise must seek to do whatever it can within its area of influence to protect the Whistleblower from retaliation.

## **VI. Roles and responsibilities**

Enterprises should appoint senior personnel of unblemished reputation, relevant competence and sufficient experience to be in charge of the management and administration of their Whistleblowing Management System. These personnel should be given a large degree of autonomy and should report to the highest echelon possible within the Enterprise. It is advisable to carefully consider inclusion, diversity, impartiality, seniority, expertise and the status of the designated personnel as the recipient and investigator of Whistleblowing reports must be trustworthy

Companies are encouraged to develop competence in-house and build capacity for receiving and handling Whistleblowing reports. Alternatively, the Enterprise may designate an external person or firm for receiving and handling its Whistleblowing reports. Such person or firm should be impartial and of unblemished reputation and should instil comfort of professionalism, confidentiality and data protection.

Enterprises shall ensure that, where a report is received through internal channels other than the designated reporting channels or by personnel other than those responsible for handling reports, the personnel who receive the report are prohibited from disclosing the content of the report and any information that might identify the Whistleblower or the person concerned, and that they promptly forward the report without modification to the personnel responsible for handling reports.

## **VII. Awareness and communication**

A Whistleblowing Management System cannot work in isolation but must form part of continuous efforts to build a strong foundation of ethics and integrity that encourages employees to speak up and voice any concerns. The promotion of the Whistleblowing Management System must reach all employees of the Enterprise and explain why whistleblowing is encouraged, how it should be done and when. The education should also bring transparency with regards to the process and foster a sense of organisational justice by explaining what will happen when a report is received, and that retaliation will not be tolerated.

Enterprises should consider providing a variety of reporting channels for whistleblowing and should accommodate different preferences, accessibility and abilities of potential Whistleblowers, combining oral and written report, such as telephone-based reporting (toll free call helplines or hotlines), digital reporting (e-mail or webform), by writing a letter to the designated person or any other tool which is fit for Whistleblowing or for reporting in person directly to the responsible staff. Note that certain laws (e.g., EU Directive) require Enterprises within the jurisdiction to set up a specific method of reporting. Enterprises

should endeavour to make reporting channels available in multiple languages, depending on the countries of operations, and create awareness of these reporting channels in the Enterprise's normal tools for communication. Clear and accessible information is key to promote uptake of the channels.

It is equally important to educate managers and the personnel who receive reports on how to listen and create psychological safety for those who come forward and on how to handle the information they receive, including data protection provisions and confidentiality. It should be recognized that submission of a confidential report via the Enterprise's whistleblowing channel is often seen as a last resort when employees don't feel encouraged to report their concerns directly to their manager. Therefore, Enterprises should clarify in its internal communication on how to differentiate between "a report" and the mere information about an issue that requires management attention and needs to be rectified in the course of normal business operations.

While the Whistleblower should not be expected to evidence wrongdoing, they should be educated to make the report diligently and with reasonable grounds in light of the circumstances and the information available to the Whistleblower at the time of reporting. It should also be made clear that reports that do not meet such standard, will be disregarded and can even result in disciplinary action or other retribution, if it is found that the system is misused, as that would lead to an environment of mistrust.

Internal reporting should always be the recommended route before reporting to external channels (e.g., competent authority) or public disclosure, unless external reporting is mandatory under applicable law or necessary for any relevant reason. The rights of the Whistleblower to report externally, e.g., to relevant competent authorities, should however be made transparent by the Enterprise from the outset.

#### **VIII. Management of the report**

Any Whistleblowing report must be timely and diligently acknowledged (typically within seven days), recorded, triaged, and investigated or otherwise addressed, under strict confidentiality rules (on a need-to-know basis), by an appropriate competent person, department, or unit.

The designated person, department or unit may be the same as the one who received the report. However, decisions about disciplinary actions or remedial measures related to the persons involved in the Wrongdoing should involve appropriate managers and the Human Resources department in accordance with local laws and the governance of the Enterprise.

While it is normally not advisable to convey details of the investigation or its findings to the Whistleblower, the steps that have been taken should be appropriately communicated as feedback to the Whistleblower within a reasonable timeframe (typically within three months).

The person whose behaviour has been reported should also be informed of the main object of the report, unless such information would pose a threat to the Whistleblower, be considered detrimental to the investigation, or prohibited by law. In any case, and to the extent permitted by law, this person's presumption of innocence and rights of defence, hearing and access to the file shall be respected. The person, department or unit in charge of the investigation should determine, on a case-by-case basis, when and how the report and its investigation should be communicated.

Enterprises should maintain, to the fullest extent possible and at all times, the confidentiality of the data revealed through the Whistleblowing System, and the identity of the Whistleblower, subject to overriding legal requirements, and should protect such data with the most appropriate means and technology pursuant to any applicable data privacy rules. No data or report should be kept for longer than it is necessary and proportionate to comply with applicable laws and regulations.

Whistleblower reports must be recorded and the investigation, including minutes of meetings, should be adequately documented and kept in a retrievable form. The records should not be stored longer than necessary according to the purpose for which it was collected, and local laws and requirements set out by the Enterprises' auditors.

Enterprises are encouraged to publish general statistics about whistleblowing and key performance indicators in order to provide comfort to employees and stakeholders that reports are taken seriously and professionally handled, and that the Enterprise seeks to improve on ethical behaviour at all times.

DRAFT