



MENA'S WHISTLE-BLOWING DILEMMA: HOW TO BEST REAP THE BENEFITS OF A WHISTLE-BLOWING REGIME

THE RISE OF WHISTLE-BLOWING:

The focus on whistle-blowing has been on the rise with a host of governmental, political, and corporate financial scandals that have unveiled international tax evasion and collusion practices such as the famed "LuxLeaks" and the recently uncovered "Panama Papers".

By definition, whistle-blowing is

when an employee reports on a wrongdoing within the organization to a designated senior officer, like the Chief Compliance Officer or Chief Counsel, or if not satisfied to an external body such as a regulator or via outright public disclosure.

SHEDDING A SPOTLIGHT ON ILLICIT ACTIVITY:

Whistle-blowing serves a great

purpose in a private corporate context. It safeguards shareholder or board member interests, keeps in check "C" level executives and more notably, amplifies the breadth and scrutiny of internal control functions.

According to Mr. Nasser A. Paracha, Head of Audit, Fraud and Compliance at Mashreq Bank, the advantages of raising

red flags from within the workforce are boundless:

- It bestows accountability on each employee,
- It heightens the probability of detection,
- It levels the playing field in hierarchical misconduct,
- It can be inexpensively and readily implemented,
- It remains one of the most effective reporting methods.

In search for statistical evidences, whistle-blowers recurrently top the list above all other detection methods for uncovering occupational fraud, collusion or financial crime; surpassing internal and external audit reviews.

As per the Association of Certified Fraud Examiners' (ACFE) publication "Report to the Nations", 2016 Middle East and North Africa Edition, tips and testimonials remain the most common detection method by a wide margin for 39% of the cases, while the runners up are internal audits at 16% and management reviews at 13%.

Regrettably though, regardless of the size of the loss, in 40.7% of actionable cases, the victim organization decided not to refer incidents to law enforcement, with fear of bad publicity as the most cited reason.

MENA'S ROADMAP TO WHISTLE-BLOWING:

In view of whistle-blowing's significance in tackling wrongdoing and financial crime, most countries have established laws to protect whistle-blowers as long as the disclosed wrongdoing is in the public's interest.

According to Mr. David Shepherd, MENA Market Lead Risk at Thomson Reuters (TR), financial regulators have realized that escalating regulations are not enough to counter balance the surge in illicit activity. As per TR's report, "The Case for Whistle-blowing Protection", Dubai and Tunisia's financial authorities lead the protectionism initiative by addressing official whistle-blowing laws; sending a clear message to the financial community that they are to be taken seriously as key tools for detecting financial crimes.

In 2017, Tunisia adopted Article 17 to protect whistleblowers as part of its five year strategy to implement an array of legal and regulatory reforms. In 2016, Dubai approved Law No. 4 which provides protection for people who report crimes to the Dubai Center for Economic Securities, an agency that has been specifically

created to avoid and reduce financial crime levels in the UAE. On the other hand, Egypt and Morocco have started establishing a form of corporate witness protection regulations.

While gaining increased regulatory attention, the complex legal systems and varying cultures that define each Arab country, our region - like many others - has yet to show promising actions that encourage employees to come forward and raise a red flag.

SETTING-UP AN EFFECTIVE MECHANISM:

At face value, empowering members of an organization to report misconduct does not seem to be a daunting task, nevertheless, many organizations fall short in establishing the basic motivators.

MENA FCCG's twelve Member Banks concluded that setting up an efficient mechanism for whis-



tle-blowers across their vast networks required a mixture of comprehensive policies, tailored training and communication programs, secured reporting platforms and more importantly, structured and equitable investigation procedures.

Keeping in mind the various corporate scenarios, MENA FCCG shortlisted five key recommendations that can enhance whistle-blowing mechanisms of small to large institutions:

Set and Communicate Clear Policies and Procedures:

Whistleblowing policies and procedures should provide standard guidelines within which organizations respond to the ethical or moral concerns of their employees. Clear whistleblowing policy is typically the first step in demonstrating an understanding of the importance of whistleblowing and the careful handling of disclosures. Whistle-blowing policies should have the following features as a minimum:

- A clear statement that employees who are aware of possible wrongdoing within the organization have a responsibility to disclose that information to appropriate parties inside the organization,
- A broad and clear description of the types of reportable concerns,
- The establishment of a clear and accessible procedure for employees to raise concerns,
- The establishment of a fair and impartial investigative process.

In addition, employees should be made aware of how the organization will respond to their concerns in terms of an investigative process. Further, ethical training

sessions should be delivered to acquaint employees with ethical dilemmas unique to their organization.

Walk the Talk:

The whistle-blowing policy must be more than words on paper. Leaders within the organization must create an overall environment within which employees recognize their obligation to behave ethically and responsibly and to continually encourage employees with ethical concerns to discuss them internally rather than externally. Employees must feel confident that their concerns will be taken seriously and will be thoroughly investigated.

Assure the Anonymity:

Coming forward or denouncing the misconduct of superiors, colleagues or customers/suppliers requires irrefutable assurances of confidentiality.

According to Mr. Qutub Yousafali, Group Head of Compliance at Al Baraka Banking Group, whistle-blowers have been most responsive when the option of concealing their identity is offered, whilst being fully assured that their organization is unable to directly or indirectly uncover the sources of submission.

The reporting of misconduct is less likely to occur when banks rely solely on traceable channels such as calls, internal emails or declarations on hand-written forms.

Whistle-blowing channels should also be made available to the broader public such as through the organization's website. A page designated to securely re-

port incidents should guide clients, contractors, and staff to submit their allegations following a series of well-structured questions. Depending on the answers, a workflow is then automatically generated to the concerned stakeholders.

Seclude the Stakeholders:

To avoid false accusations and the superfluous chatter associated to such delicate matters, reporting mechanisms ought to be designed to filter and restrict information to a pre-defined, minimal number of individuals that are trained to assess, investigate or possibly re-assign each claim according to confidential reporting protocols.

Mr. Walid Gamal El Din El Seyoufi, Deputy General Manager-Group Risk Management and Compliance at the National Bank of Kuwait (NBK) explains that as a rule of thumb it's preferred for whistle-blowing claims to be addressed directly to the internal audit department for investigation, where in due course, even if they are unproven, they need to be registered and reported to the risk management department, who shall hold the final authority to close the status of each claim.

It is important to mention that in certain cases the process of collecting claims is outsourced to hotline vendors, customer service agents or external auditors. However, despite the intricate politics of each bank, it is recommended for the whistle-blowing workflow to be bound to a maximum of three stakeholders: the receiver, the internal audit department and the risk management department.

Protect and Celebrate those who blow the whistle:

History has paraded countless whistleblowers that have been legally pursued, publically disgraced or even exiled, whilst heroes of whistle-blowing, if any, linger in forgotten archives. As a consequence, people are often deterred from blowing the whistle because of the negative perceptions associated with tattletales.

To counter balance this entrenched apprehension, Mr. Chahdan Jebeyli General Manager, Group Head Legal & Compliance at Bank Audi

recommends that policies and procedures meticulously detail top management's pledge to protect the rights of whistleblowers. Measures include but are not limited to:

- The guarantee of confidentiality and impartial treatment,
- The processing of claims by non-biased professionals,
- The possibility for transfer or horizontal re-assignment,
- The issuance of rewards or monetary compensation.

Of course, when incidents arise, these policies have to be rigidly applied without any retaliation as

to set precedence for the firm's credibility within its labor force and business community.

In conclusion, MENA FCCG is confident that the financial sector in the region will continue to harness whistle-blowing regimes to reap the associated benefits including preventing public disclosures of alleged organizational wrongdoing, creating a more just workplace, and strengthening corporate governance by bringing an effective method of increasing transparency and enhancing good governance.

ABOUT THE AUTHOR



ANTOINE HOBEICHE:

Mr. Antoine Hobeiche is the Managing Partner of React-Adapt-Lead Consulting, a Canadian-MENA consulting firm that has proven expertise in enhancing some of the biggest private & public sector organizations. He

has more than 20 years experience in advising government agencies, central banks, banks and other non-financial service providers. Antoine won in 2007 the World Quality Award in Paris-France, in 2008, the Global Crown Award in London- United Kingdom and in 2011, was nominated for the Diamond Award New York-USA. He holds a dual degree in business administration and human resources from Molson Business School, Canada and his specialization is in strategy from Harvard Business School, USA. Antoine is very active in the international community being a prominent speaker for many organizations such as the United Nations and the OECD. He also serves as the advisor of the Union of Arab Banks, the World Union of Arab Bankers and the MENA Financial Crime Compliance Group.

MENA FCCG

The MENA Financial Crime Compliance Group (MENA FCCG) is a voluntary body that seeks to bring collective action in the fight against money laundering and terrorist finance in the region. The group comprises 12 banks representing eight MENA countries, including; Bahrain, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, and the UAE. The Group is presided over by Wissam H. Fatouh, Secretary General for the Union of Arab Banks while Michael Matossian is the current Deputy Chair.

