



Deloitte India Survey on the
effectiveness of corporate
whistleblowing mechanisms

Introduction

Over seven years ago the Companies Act, 2013, mandated the need for setting up vigil mechanisms (among listed companies and other specific classes of companies) to report corporate malpractice, fraud, misconduct and non-compliance. But where has corporate India reached in its efforts to successfully implement whistleblowing mechanisms? Are employees and other stakeholder comfortable using these channels to report their concerns? Have these channels helped to reduce losses due to frauds and improve stakeholder confidence in the management? To address these questions Deloitte's Forensic practice in India undertook the second edition of its whistleblowing survey. (The first edition, launched in 2014, focussed on the corporate sentiment towards developing whistle-blower mechanisms in light of the then recently passed provision in the Companies, Act, 2013).

While many organisations have implemented a whistleblowing mechanism, our survey findings indicate that there has not been a significant investment in the implementation of these, and there is a lack of awareness as well. Consequently, there is limited confidence in the confidentiality of the mechanism and transparency on the actions taken by the company to address the complaints received, hence stakeholders are reluctant to come forward and voice their concerns. Due to these challenges smaller corporations are still debating the basic need to set up a whistleblowing mechanism. The survey findings indicate three areas of development that corporates can consider in order to increase stakeholder confidence in the whistleblowing mechanisms implemented by the company.

- Building a more robust framework around the whistle-blower mechanism to actively address all complaints received

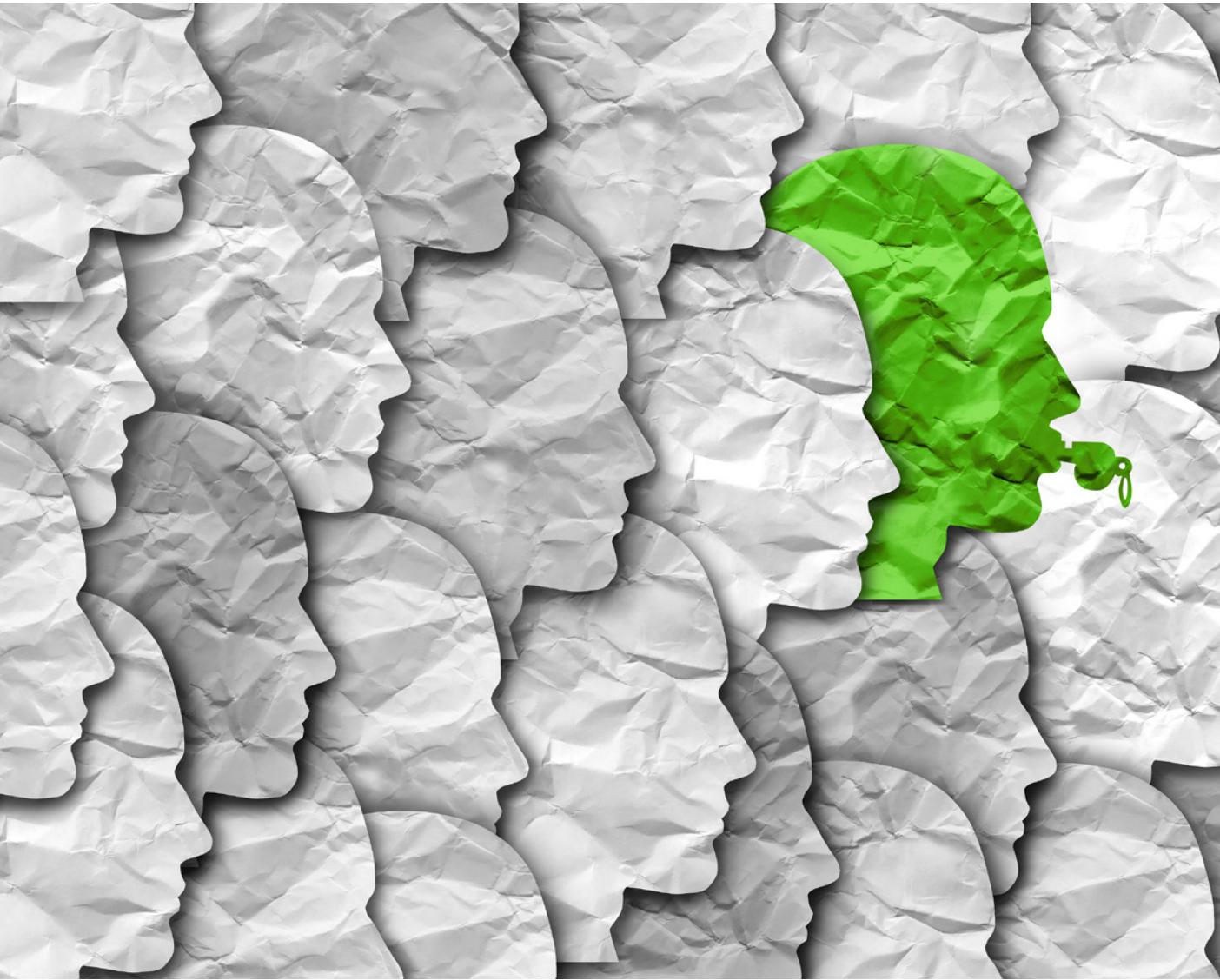
- Increasing training programmes to build awareness, and stakeholder trust in existing whistleblowing mechanisms
- Communicating to employees the actions taken towards whistle-blower complaints received

Since the time our survey concluded, the world has experienced the COVID-19 pandemic resulting in large scale remote working arrangements. However, despite the change in location of work, many of the ethical dilemmas and policy violations that would require to be reported via whistleblower programmes continue to persist. Organisations which invested in robust whistleblowing programmes have been able to address these issues. Interestingly, many large organisations in countries with more mature whistleblower programmes have scaled up their operations during the COVID-19 pandemic. They have also begun utilising their whistleblower infrastructure to provide a COVID-19 helpline to resolve employee queries and provide guidance to company policies for operations. In some cases updates on employee health and well-being have also been gathered through this mechanism.

I hope that this survey report will help you make your existing whistleblowing programmes robust. I also hope it will inspire many of you to start thinking of vigil mechanisms as a powerful tool for reporting violations and enhancing corporate governance.



Regards,
Nikhil Bedi,
Partner and Leader – Forensic,
Financial Advisory, Deloitte India



Section 1: Companies have implemented whistleblowing programmes, but how robust are these?

Over 50 percent of our survey respondents comprised custodians of whistleblowing programmes in organisations. This section has exclusively used their responses to derive insights.



About **41 percent** of respondents have implemented or enhanced their whistle-blower mechanism after the legislation was passed.

About **12.5 percent** indicated that they were yet to implement a structured whistleblowing mechanism

About **30 percent** of respondents indicated not using a Whistleblower Policy document to provide guidance to employees on the whistle-blower programme



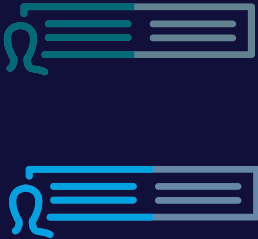
Organisations largely only provide one channel to report concerns.

Only **33 percent** of respondents said they provided three or more channels in their whistleblowing mechanism, including email, live voice answering and voicemail



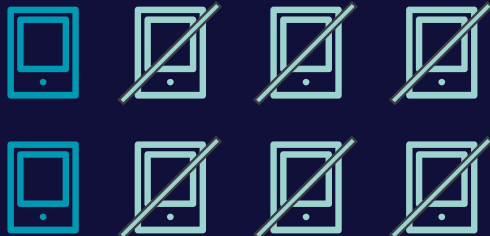
About **47 percent** of respondents indicated investing less than INR 5 lakhs annually on their whistleblowing mechanism. Over two-third of all respondents indicated relying partly or completely on an in-house operated programme

Less than **33 percent** of respondents indicated having an annual training programme and less than **40 percent** run periodic campaigns or newsletters to increase awareness about their whistleblowing mechanism



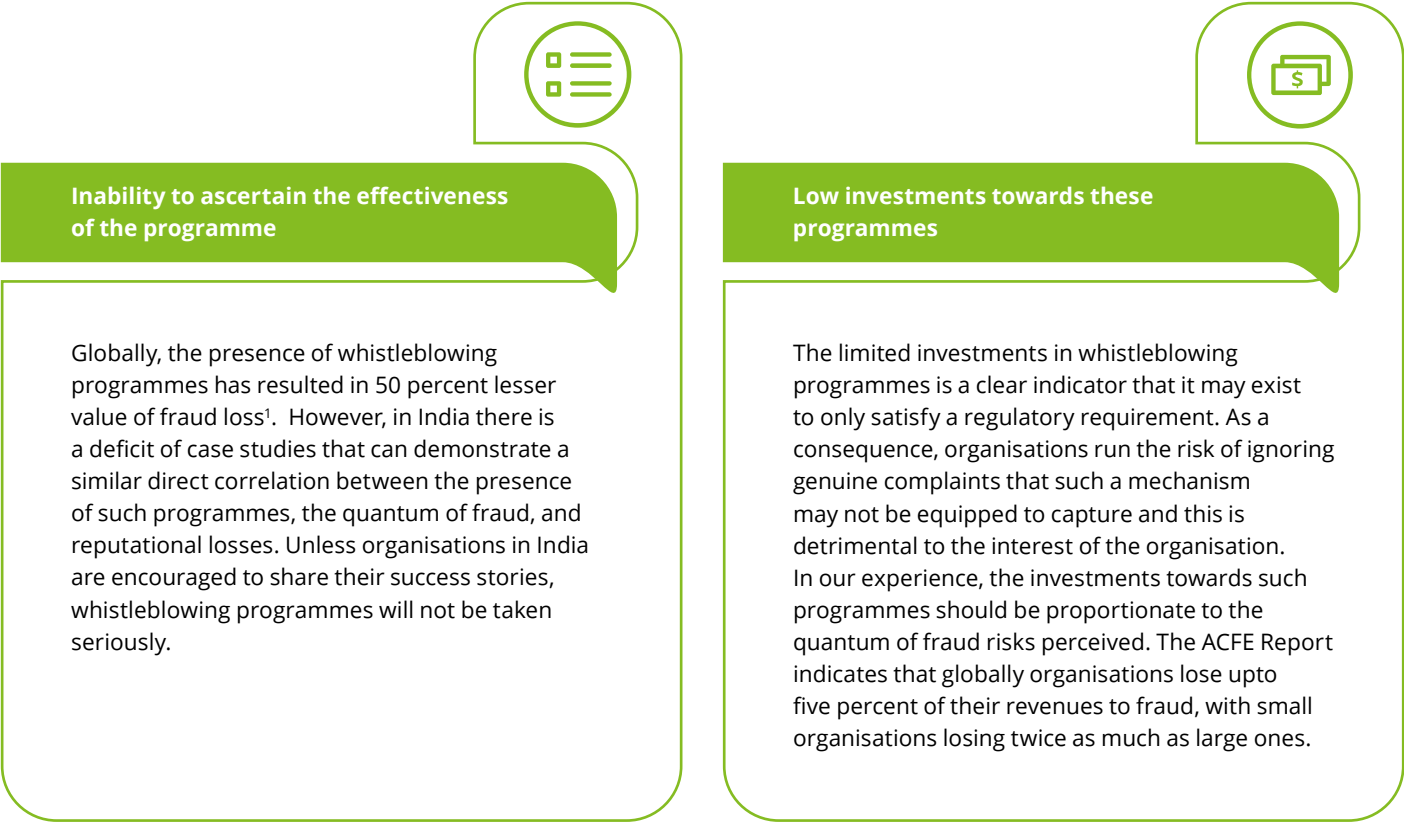
Nearly half of the respondents indicated that the custodian of their organisation's whistleblowing programme was a committee such as the Ethics Committee, Audit Committee or the Board. The rest indicated that single individuals - like the Head of HR or Compliance or Internal Audit - were the custodians.

Almost **75 percent** of the respondents indicated not using any case management system to track and monitor all complaints received and communicate the ongoing status of any associated investigations.



Deloitte perspective

Companies face an ambiguity on the detailed requirements of what could constitute an adequate vigil mechanism to detect corporate fraud and misconduct. Companies have therefore implemented whistle-blower mechanisms of varied complexities based on their discretion. In our experience many small companies where the legislation is not applicable have completely avoided setting up a formal vigil mechanism. This situation appears to have posed a quandary for organisations, as substantiated by the survey results –



In recent times major corporate frauds have been exposed in the public domain due to whistle-blower complaints received, which has put the spotlight back on these mechanisms. Given the importance of such platforms in exposing corporate frauds, it remains to be seen if momentum for the enhancement of whistle-blower mechanisms is created.

¹Source: ACFE Report to the Nations on Occupational Fraud and Abuse, 2018 (‘ACFE Report’)



Section 2:

Organisations that have invested in annual training programmes and awareness campaigns have seen greater success from whistle-blower programmes

Over 50 percent of our survey respondents comprised custodians of whistleblowing programmes in organisations. This section has exclusively used their responses to derive insights.



Over **60%** of respondents believe that their whistleblowing programmes have increased employee confidence in the management and bolstered management sensitivity and intent to address fraud and noncompliance-related issues



While over **35 percent** of respondents indicated seeing a reduction in losses due to early detection of fraudulent practices,

it is interesting to note that almost **60 percent** of respondents mentioned receiving less than 10 complaints a year



Further, personal grievances dominated the type of complaints reported through the whistleblowing channels



Respondents representing companies with annual trainings and dedicated internal campaigns indicated receiving a higher number of complaints, dominated by ethical issues such as bribery and corruption or sexual harassment. These complaints formed over **50 percent** of all investigations undertaken by the organisation.



Deloitte perspective

Survey results indicate that organisations with reasonably well structured mechanisms tend to see positive results – higher numbers of relevant disclosures, higher proportion of fraudulent issues highlighted, investigations taken to logical conclusions, strengthening of internal controls and reduction in losses. Yet, there remain issues that need to be addressed if these programmes are to become comparable with global whistleblowing programmes.



Addressing frivolous complaints

In our experience, we have observed channels inundated with complaints pertaining to personal grievances (with peers, poor performance reviews or appraisals) and complaints about office properties (faulty hardware, dysfunctional printers, etc.). While these are operational issues that need to be addressed, they also end up consuming significant management time. Over time, an abundance of such issues on the whistleblowing channel can result in it being shut down or abandoned. To tackle the influx of complaints, global organisations tend to outsource the hotline channel management to third parties, who may sift through responses and identify the right team that can address this. It is also important therefore to devise and communicate the scope of the whistle-blower policy and what constitutes a relevant disclosure.



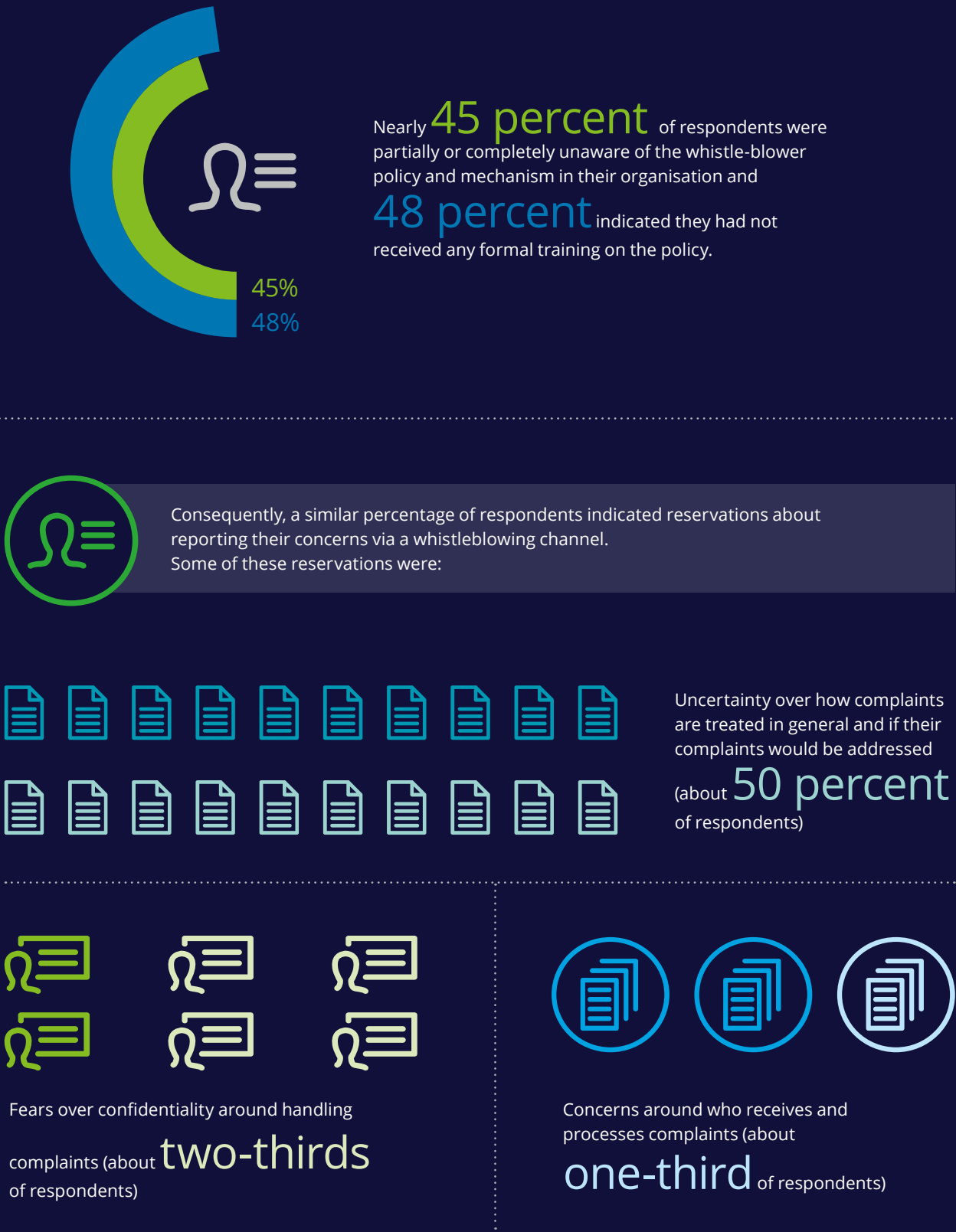
Emphasis on training

A successful whistleblowing programme needs to generate awareness on the type of issues that can be reported through the mechanism and the distinction between ethical violations and corporate malpractices, from human resource matters and administrative issues. Such training can include various risks and schemes which could indicate corporate malpractices such as conflict of interest, bribery, kickbacks, embezzlement of funds, etc.



Section 3:
Employee confidence in
whistleblowing programmes
remains low

A little less than 50 percent of our survey respondents comprised of working professionals who responded to a different set of questions on the effectiveness of whistleblowing channels. This section has exclusively used their responses to derive insights.



Deloitte perspective



A true measure of success of a whistle-blower mechanism is employee willingness to use it to report violations or potential fraud. It is also critical that employees are made aware of the nature of disclosures that a whistle-blower mechanism is meant for, and perhaps the kind of additional information that makes investigation of a disclosure effective; e.g. indicators of an incident, identity of counterparties, existence of documentary evidence, etc. Survey results indicate that this aspect remains a challenge for organisations.

In our experience, organisations can consider adopting the following best practices to address employee concerns.



Discuss how complaints are handled

Organisations can communicate specific instances where a whistle-blower complaint led to an investigation and subsequently appropriate action was taken against those involved in the malpractices. Specifically, it must also highlight how the whistle-blower was treated/ protected throughout the process. Not communicating these aspects of the whistleblowing programme can lead to misinformation and false propaganda.



Co-opt employees to champion the programme

Leading organisations have instituted ethics champions among employees who reinforce the message of ethical practices and encourage their colleagues to use the whistleblowing hotline. This can help improve the perception around whistleblowing programmes.



Recognising ethical behaviours

Many large organisations are beginning to publicly reward and recognise their staff for demonstrating ethical behaviours. While one may argue that such an award isn't necessary, in the current climate of ethical dilemma and malpractice, it can help put the spotlight on ethical behaviours and whistleblowing.



Building a robust Whistleblower Programme

Nearly 40 percent of all corporate fraud, misconduct and malpractice is detected by tips globally. Organisations with whistleblowing channels detect fraud more often than those without (46 percent of cases, as opposed to 30 percent)². A robust whistleblowing channel should ideally act as the first source that individuals can access to report suspicious conduct/transactions.

However, several factors can pose as roadblocks. Cultural skepticism of whistleblowing in general, limited clarity on what issues can be reported through such channels, and lack of trust due to limited knowledge of what happens to complaints received. Unless organisations actively address these issues, a whistleblower channel is likely to remain ineffective.

²Source: ACFE Report to the Nations on Occupational Fraud and Abuse, 2018

In our experience we have noted that effective whistleblower programmes tend to have the following features:

01

A whistle-blower policy document which provides guidance on the mechanism (including scope, responsibilities of the complainant and the ethics committee etc.) and provides emphasis on the protection (and non-retaliation) for whistleblowers

02

Access to multiple channels such as live answering calls, voicemails, email, etc. to report the complaints

03

A committee of ombudspersons comprised of different department heads who are responsible for overseeing the programme and independently reviewing all complaints received in the mechanism

04

An independent service provider who confidentially receives all the complaints, maintains a record of all complaints received and provides any available feedback to the whistleblower

05

An agile complaint review mechanism which evaluates all complaints and determines the necessary course of action within a reasonable period of time

06

A dedicated budget to ensure smooth functioning and wide coverage of the programme

07

Mandatory annual training to staff and third parties on the programme

08

Extending the programme to third parties, such as vendors, business partners and contract staff

The future of whistleblower programmes in India

Effective whistle-blower programmes can be a foundation for establishing a level playing field, both within and outside the company, and upholding corporate governance norms. In the last couple of decades, several organisations in developed nations have demonstrated their commitment to developing strong whistle-blower mechanisms. Legislative measures have also supported the need for disclosures around fraud and malpractice alongside providing protection to whistleblowers. In the developing world, as more and more millennials and younger generations are exposed to a global education that places emphasis on fair play and puts the corporation above personal interests, we see organisations in these countries embark on a path to developing robust whistleblowing programmes. In India a significant portion of the working class today is far more outspoken and far less tolerant of ambiguities and malpractice. Organisations can rely on them to build an ethical culture and promote whistleblowing as an act of self-defense against forces that endanger organisational reputation.

From an infrastructure standpoint, to ensure the objectivity of whistleblowing programmes, organisations can use software to record and manage complaints. This way, issues can be addressed on time and communicated back to whistleblowers. Technology can

also be leveraged to manage multiple channels for reporting complaints. From a regulatory standpoint, India lacks a specific protection for whistleblowers. However, the Government of India's Whistle Blowers Protection (Amendment) Bill, 2015, addresses protection for whistle-blowers in public interest disclosures against acts of corruption, wilful misuse of power or discretion, or criminal offences by public servants. In time, one can expect the coverage of the Bill to be expanded to include private sector malpractice and fraud, as is the case in several developed countries. Corporate protection to whistle-blowers would significantly boost whistle-blower confidence.

While the future looks promising for whistleblowing programmes, they can still be derailed by one factor – the perception of potential whistle-blowers that their organisations lack seriousness in addressing complaints. In the last few years whistleblowers have taken to social media to highlight cases of malpractice and misconduct as they felt the involved organisations did not demonstrate the necessary seriousness in addressing them. Unfortunately, the repercussions of social media exposé have been severe for all involved parties – the organisation, complainant, and the accused. In light of this, organisations need to go beyond stating their intent, and clearly demonstrate results to all stakeholders.



Perspectives from South East Asia

Singapore

This section has been authored by Jarrod Baker, Partner with our Singapore practice. Views expressed should not be attributed to Deloitte India.

Corporate whistleblowing landscape

The Code of Corporate Governance requires companies listed on the Singapore Exchange (SGX) to publicly disclose and clearly communicate to employees, the existence of a whistle-blowing policy and the procedures whereby concerns can be raised. Whilst many larger companies adopt a whistle-blowing policy and associated procedures, smaller private companies tend to lack formal whistle-blowing mechanisms due to resource constraints. In our experience, corporate whistle-blowing is most commonly handled internally through an individual company's whistle-blowing mechanism, which usually includes having a whistle-blowing policy and reporting channels in place.

Best practices currently followed

The Singapore Institute of Directors, which is the national association of company directors in Singapore, developed a statement of good practice (SGP) on whistle-blowing policies, which details best practices around whistle-blowing reporting mechanisms. The SGP recommends the following elements:

- 24 hours access, 365 days per year;
- Multi-lingual capability, particularly for operations in foreign locations;
- Multiple communication channels, e.g. hotline, web, email, facsimile and post;
- Ability or mechanism to provide feedback to the whistle-blower even if they are anonymous; and
- An outsourced solution as the mechanism is independent of management (deemed to give potential whistle-blowers a greater sense of transparency and commitment to do something about the matters reported).

Many listed companies and government agencies have whistle-blowing mechanisms that adopt these best practices.

Legislation and Regulation

Singapore does not have a universal legislation in place for whistle-blowing.

Instead, the city-state draws upon a variety of different legislations to provide protection for a targeted group of whistle-blowers including corruption and drug related complainants. Examples of such legislative protection is set out in the Prevention of Corruption Act whereby, Section 36 of the Act provides protection by mandating confidentiality of a whistle-blower's identity. Similarly, Section 23 of the Misuse of Drugs Act, provides the same confidentiality protection for whistle-blowers.

Singapore Exchange Regulation (SGX RegCo), which is a wholly-owned subsidiary of SGX, undertakes all frontline regulatory functions on behalf of SGX and its regulated subsidiaries. In late 2019, SGX RegCo, set up a whistle-blowing office to provide a formal whistle-blowing channel to ensure confidentiality of reports and robustness of process.

The whistle-blowing office serves as the primary department for the receipt, assessment and management of all whistleblowing allegations against SGX listed companies.

Overall, existing whistle-blower legislation in Singapore provides limited protection as it only covers a targeted group of whistle-blowers. Concerns have been raised by some organisations and individuals that the absence of general whistle-blowing legislation inadvertently allows groups of whistle-blowers to fall through the gaps, leaving whistle-blowers of workplace issues such as fraud and misconduct potentially vulnerable to retaliation for making such reports.

SGX RegCo Leads the Charge

To provide greater reassurance and encourage reporting by whistle-blowers, in February 2020, SGX RegCo announced that it intends to enact into its listing rules, a whistle-blowing policy that would require all SGX listed companies to ensure confidentiality, and no retaliation against whistle-blowers. In this regard, SGX RegCo is looking to consult the market in June 2020 and thereafter enact the whistle-blowing policy by the end of 2020.

About the survey

This survey report has been developed on the basis of responses received to a questionnaire that we circulated to leading CXOs and working professionals across all major sectors and organisations, in December 2019 and January 2020 . The survey saw a total of 218 responses, of which over half of them identified themselves as custodians of the whistleblowing programmes in their organisations.

The response rate to questions varies and not all respondents have answered all questions in the survey. Each statistic used in this report is derived from the number of responses to that question and must not be considered consistent across the report. For multiple choice questions and priority based questions, the weighted average of responses for that question has been used to derive the statistics.

Acknowledgements

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About Deloitte’s Forensic practice in India

Deloitte’s Forensic practice in India helps organisations protect their brand and reputation through proactive advice on their exposure to fraud, corruption, noncompliance, misconduct and other future business risk issues. The practice also helps clients react quickly and confidently in a crisis, investigation or dispute scenario. Practitioners have extensive experience investigating whistle-blower complaints and working with custodians to develop robust redressal mechanisms and associated policies.

We use our global network, deep industry experience and advanced analytical technology to understand and resolve/ deal with all such issues. The team comprises of CAs, MBAs, CFEs, forensic accountants, lawyers, investigative journalists, economists, professionals with law enforcement experience, computer forensic and data analytics specialists and engineers, to name a few, who bring in diverse skill sets to the practice.

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