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The silent whistle

Actionable steps to improve effectiveness of whistle-blowing policies.

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ON FEB 27, the Centre for Investor Protection released its report on the findings of the first in-depth study of whistle-blowing (WB) policies in Singapore, titled *Will You Listen?*, authored by us. The study assessed disclosures in the latest annual and sustainability reports for the 2023 and 2024 financial years and the corporate websites of 536 issuers with a primary listing on the Singapore Exchange (SGX), against SGX requirements and other good practices.

Overall, there is significant room for improvement in policies based on what issuers disclosed. This inference is not based solely on the study, but also on our own experiences and interactions with directors, executives and employees.

We found that 29.3 per cent did not reveal the number of complaints, and nearly two-thirds disclosed they had zero complaints. Issuers with no complaints should not necessarily assume that there is no misconduct in the company. It may simply be because their WB policies are ineffective.

Lack of transparency

Companies were often vague in their disclosures of WB complaints, including Straits Times Index (STI) companies.

One STI company said that as at Dec 31, 2023, there were no incidents of corruption, fraud, and money-laundering activity across the group, apart from five non-major incidents of fraud under one of its major subsidiaries. This does not mean there were no WB reports or that the five incidents came from such reports.

Another said: "In 2023, among the reported incidents of breaches to our code of conduct received through the whistle-blower reporting channels, there were three reports alleging corruption or bribery, one incident related to conflict of interest and another four incidents related to workplace discrimination. All complaints were followed up and there (was) no substantiation of the allegations for concluded reviews or those that are currently under review. None of the reported incidents were related to customer-privacy data, money laundering or insider trading." It is not clear that there were only eight WB reports.

The company also mentioned that "there (was) no substantiation of the allegations (including) for… those that are currently under review". It is odd to conclude that allegations are not substantiated when they are still under review. Perhaps it meant they were still under investigation, rather than not substantiated.

A third company did not disclose the number of WB complaints but said there were "zero confirmed incidents of corruption and money laundering; zero cases of non-compliance with environment-related rules and regulations; zero breaches of customer privacy; no financial penalties or sanctions to date (PMLTF)".

Another STI company said: "(The group) had no monetary losses because of legal proceedings associated with fraud, insider trading, anti-trust, anti-competitive behaviour, market manipulation, malpractice, or other related financial industry laws or regulations in FY2024… There were no cases of bribery, corruption, anti-competitive behaviour, or other material non-compliance with the law at (the group) in FY2024." Again, it did not disclose the number of WB reports.

Singtel sets a good example

Singtel stood out for its transparency. Among those that disclosed the number of WB reports, it has by far the highest number in FY2024, a total of 103, with 70 in Optus and 33 in the rest of the group. In addition, there were another 111 fraud/corruption-related cases from non-WB channels (such as compliance checks and investigations by law enforcement agencies), with 100 of them in Optus.

A large number of WB complaints is not necessarily a cause for concern. Recently, a US multinational corporation which is recognised as a highly ethical company shared that it had more than 100 WB complaints in the region over the past year and was comfortable with that number – because it indicates that employees are willing to speak up.

Of course, one needs to interpret the number of complaints with other indicators, such as those relating to corporate culture, compliance checks and internal audit.

Singtel gave further information on how many cases were substantiated, not unsubstantiated or under investigation; cases brought forward; substantiated cases outside Singapore/Australia; the breakdown of the nature of the substantiated cases; and actions taken for corruption-related cases.

The difference in the number of cases from WB and non-WB channels between Optus and the rest of the Singtel group is interesting.

The number of WB complaints for Optus was more than double compared with the rest of the group, while the number of other cases that did not come from WB complaints was nearly nine times.

Fifty-two per cent of substantiated cases from WB channels and 81 per cent of those from non-WB channels came from Optus.

For those that were under investigation as at the end of the previous financial year, Optus accounted for 11 out of the 12 cases for the group that came via WB channels and 21 out of the 23 of those from non-WB channels.

In FY2024, Optus had 6,716 employees, which is about half the 13,228 employees in the rest of the group, and accounts for about half of the total group revenue. Therefore, there are relatively more cases received and substantiated for Optus compared with the rest of the group, taking into account their relative size.

There are a number of possible explanations for the above differences, including stronger WB protection legislation in Australia making employees more willing to speak up, or even more robust checks by the company and law enforcement agencies there. What is important is for the audit committee to oversee the review and investigation of cases of potential misconduct from WB and other channels, monitor trends, understand underlying drivers, and ensure appropriate follow-up actions. It should also keep the board appropriately apprised.

Be alert to other problems

Companies should be alert to significant gaps between complaints and the number of cases substantiated as it could mean that investigation procedures are not robust, rather than there being a lack of basis for the complaints.

In our study, we assessed that less than half of the issuers covered disclosed that they have at least one independent function to investigate complaints. Others either did not disclose the function, or the functions disclosed were not necessarily independent.

The independent function charged with investigation also needs to have the appropriate skills and experience and be adequately resourced.

Some companies that receive many complaints through their WB channels shared with us that grievances often relate to human-resource issues, such as unfair performance appraisals. Companies should review if they have alternative feedback mechanisms for grievances and whether their WB policy is sufficiently clear as to what type of breaches should be reported through the policy.

We also often hear that many complaints are malicious. A large number of malicious complaints may be indicative of a toxic corporate culture.

Taking positive steps

Here are some steps that companies can take to improve the implementation of their WB policies.

- Make sure the type of reportable breaches is not overly narrow, while ensuring that there are adequate grievance and feedback mechanisms for other complaints. This is to ensure that the WB system does not become a grievance mechanism.
- Publish a detailed policy on the corporate website.
- Ensure the policy is clearly communicated to employees and included in onboarding and training. Emphasise that whistle-blowers do not need to be certain of misconduct to make a report, but that they should have reasonable belief and do so without malice.
- Allow a broad range of potential complainants (including external parties) to make reports.
- Provide multiple channels for reporting, including reporting to the audit committee chairman or some other independent director or board committee. However, ensure that there is a process to document all reports and escalate them to the audit committee for review.
- Make available multiple methods of reporting. While external hotlines may be useful, it does not necessarily mean that employees will trust such hotlines.
- Allow anonymous reports while encouraging the disclosure of identity to facilitate investigations. Under no circumstances should the company attempt to uncover the identity of the whistle-blower, even if complaints are malicious, because this will undermine trust in the system.
- Acknowledge complaints, particularly those that are non-anonymous, and, if possible, keep the whistle-blower apprised of the progress and outcome.
- Explain how the identity of the complainant is kept confidential.
- Explain how complainants are protected against detriment and provide avenues for them to go to in the event they face detriment.
- Indicate what the company will do against those who take reprisal actions.
- Explain how investigations will be conducted, and that they are led by a function that is independent of management and which reports to the audit committee or another independent board committee.
- The audit committee or another independent board committee oversees and monitors the policy and its operation.
- The audit committee keeps the board of directors informed about significant cases, investigations and outcomes.
- Commend employees who make reports that have helped the company uncover misconduct, while protecting their identity.

Ultimately, a WB policy can only be effective if the corporate culture supports well-meaning and courageous individuals in stepping forward to blow the whistle. There should also be an independent and effective board that ensures that all reports are taken seriously and investigated where there is sufficient basis, with appropriate actions taken.

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