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WHISTLEBLOWING FRAMEWORKS

IT'S THE TRUST ISSUE

WHISTLEBLOWING, the act of reporting wrongdoing or misconduct within an organisation, has gained increasing importance in the Asia-Pacific region, with organisations putting greater emphasis on establishing robust whistleblowing frameworks.

Globally, there have been instances where whistleblowers have played a crucial role in exposing corruption and wrongdoing.

For instance, Alayne Fleischmann was known as the whistleblower for one of the most significant white-collar crime cases in United States history. In late 2007, at the height of the US subprime mortgage crises, Fleischmann, previously an associate at JPMorgan Chase, found the bank was fabricating and selling below-standard mortgages to investors.

Consequently, this led to a record US\$9 billion settlement by JPMorgan Chase to the US government in 2013.

Despite its growing importance, some companies are reluctant to establish a whistleblowing programme. The recently launched Deloitte 2023 Asia Pacific Whistleblowing (Conduct Watch) Survey Report found that 93 per cent of over 500 respondents have, or plan to have, a whistleblowing programme in the future, while the remaining do not plan to do so.

The reasons for not having a whistleblowing programme were that management did not see a need for one, their organisations were too small, there was a lack of resources and expertise, and there were no specific legal or regulatory requirements to have one, said the report.

Further, trust is another major hiccup for organisations to have robust and effective whistleblowing programme.

At the launch of the Deloitte report recently, Bursa Malaysia

chairman Tan Sri Abdul Wahid Omar said corporate entities must develop a clear whistleblowing policy with trusted communication channels to protect whistleblowers and employees reporting issues or misconduct.

"It is even more important to create a culture of trust because the people (employees) must trust the system. They must trust that their identity will be protected and there will not be any reprisals," he said.

Clearly, trust provides a fertile ground for whistleblowing to thrive. Trust nourishes whistleblowing.

In most organisations, the independent person to whom the report is made to will be the senior independent director (or the chairman, if the chairman is an independent director), the audit committee chairman, chief integrity officer or chief internal auditor. What should be noted is that all the above persons are within the organisation and are not independent of the organisation.

There will be apprehension and anxiety when reporting is to be made to someone within the organisation. And where there is a trust deficit, people will be reluctant to report wrongdoing.

As such, some organisations have processes which allow whistleblowers to communicate with parties outside the organisation in an effort to encourage whistleblowing.

It is important to note that whistleblowers may face challenges and obstacles in any country. Several factors may contribute to the perceived failure of whistleblowing.

Limited legal protection

Although there are some laws in place, such as the Whistleblower Protection Act 2010, critics argue that the legislation falls short of providing comprehensive protection and fails to cover all instances effectively.

For example, certain laws may penalise the disclosure of certain confidential information like banking or those considered official secrets. Furthermore, whistleblowing may only be done to stipulated authorities and the press is not one of them.

The lack of robust legal protection can discourage individuals from coming forward with information due to fears of retaliation or legal consequences.

It would be good if all these impediments can be removed or curtailed substantially.

The only requirement should be that the whistleblower acts in good faith.

Fear of retaliation

This is a real and persistent fear. Whistleblowers often face significant risks such as threats to their personal safety, loss of employment, damage to their reputation and other forms of retaliation.

The fear of these consequences can deter individuals from exposing any wrongdoing, particularly when there is a perception that the wrongdoers have influential positions or strong connections within the government or corporate sectors.

This fear, arising from a trust deficit, has given rise to anonymous whistleblowing. Anonymous whistleblowers should be entertained as the end justifies the means — the discovery of the wrongdoing justifies the entertaining of the anonymous whistleblower.

Lack of awareness and trust

There may be a lack of awareness and understanding among the staff and public of the importance of whistleblowing and the mechanisms available for reporting misconduct.

Additionally, some individuals may lack trust in the existing systems and institutions responsible for investigating and addressing whistleblowers' claims, leading

to a reluctance to come forward.

Awareness is facilitated by requirements to have a whistleblowing policy and procedures and communicating them to stakeholders and through a corporate website.

For public-listed companies (PLCs), the listing requirements require PLCs to have whistleblowing policies and procedures and to have these disclosed on the corporate website.

These are all forms — structures and processes. It will rarely succeed unless the trust issue is addressed.

Cultural factors

Cultural factors can also play a role in hindering whistleblowing efforts. In some societies, there may be a prevailing culture of loyalty to one's organisation or institution or leader, which discourages individuals from reporting internal misconduct.

There can also be a stigma attached to whistleblowing, with individuals being seen as disloyal or troublemakers.

Inefficient enforcement

Even if whistleblowers do come forward with information, the enforcement of laws and regulations to address the reported misconduct may be inconsistent or inefficient. This lack of effective enforcement can further erode confidence in the whistleblowing process.

Whistleblowers play a crucial role in uncovering information, revealing corrupt agendas and shedding light on issues that might otherwise go unnoticed or unaddressed.

Though efforts are ongoing to strengthen legal protection and raise awareness, improving the overall environment for whistleblowing needs to be done sooner rather than later.

The writer is chief executive officer of Minority Shareholders Watch Group

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