

ANTI-CORRUPTION HELPDESK

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WHISTLEBLOWER REWARD PROGRAMMES

QUERY

Can you provide information on whistleblower reward programmes? Which countries have such reward programmes, and what are the main features? Is there any research showing the effectiveness of such reward systems; that is, are people more likely to blow the whistle if a reward is given or not?

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Author(s)

Caitlin Maslen, Transparency International,
tihelpdesk@transparency.org

Reviewer(s)

Marie Chene, Transparency International,
tihelpdesk@transparency.org

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SUMMARY

Several countries, such as the US, Canada and South Korea, have introduced whistleblower reward programmes that aim to increase the quantity of disclosures about cases of corruption, fraud, misconduct and other illegal activities. These mechanisms award informants with a payment if their information leads to successful prosecution or recovery of funds.

Some analyses suggest that these programmes are successful as they incentivise individuals or groups to come forward with information. However, alternative research suggests that they could create potentially negative effects, such as a rise in false reports. This Helpdesk answer provides an overview of reward programmes and examples of countries which have enacted such legislation.

1 RATIONALE FOR INTRODUCING FINANCIAL INCENTIVES FOR WHISTLEBLOWING

Whistleblowing protection and corruption

Violations of the law are uncovered through traditional methods of policing, whistleblowers or both. Whistleblowing is the act of sounding the alarm by an employee, director or external person to reveal neglect or abuses in the activities of an organisation, government body or company (or one of its business partners) that threaten its integrity, reputation and/or public interest (Transparency International 2009). A whistleblower may report misconduct through internal reporting mechanisms or externally through an independent body.

Countries such as the US, South Africa, Australia, Canada, South Korea and the UK are considered examples as having good practices in whistleblower legislation (Wolfe et al. 2014). Each of these states has enacted dedicated laws and agencies to cover whistleblowing and protect whistleblowers within public and sometimes private sectors (Wolfe et al. 2014).

Whistleblowers are integral to anti-corruption efforts as their information uncovers a range of corrupt acts and wrongdoing. Their disclosures may include information on: corruption, fraud, mismanagement and wrongdoing which threatens public health, safety, human rights, the environment and the rule of law (Transparency International 2013). Employees are more likely to detect wrongdoing in their daily routine than outsiders which increases the likelihood and speed of exposure.

The higher risk of detection is more likely to prevent corruption than the threat of severe sanctions (Howse and Daniels 1995). As such, whistleblowing is now considered among the most effective means to expose corruption, with internal informants now representing one of the most significant sources of corporate fraud and corruption (Wolfe et al. 2014; Faunce et al. 2014).

Yet, whistleblowing does not come without risks. In the workplace, informants may experience dismissal, suspension, demotion and denial of promotion.

Whistleblowers may also suffer personal threats, such as being sued, arrested, threatened, assaulted or, in extreme cases, killed (Transparency International. 2013).

Whistleblower is currently not a universally recognised term and the difficulty in translating the term into other languages has led to problems in public perceptions of whistleblowers as well as creating challenges when proposing and drafting whistleblower protection laws (Transparency International 2013). In many EU countries, alternative terms such as “denunciator” and “snitch” are commonly used by citizens and the media alike (Transparency International 2013). This negative cultural perception, fear of victimisation and a lack of trust in management are the major deterrents to whistleblowing (Ayagre and Aido-Buameh 2014).

The first step to overcome these challenges and encourage reporting is to offer adequate protection from any forms of retaliation to employees. This is all the more important as the detection of corruption or abuse of authority is more probable in environments with strong whistleblower protection (OECD 2012).

Whistleblowing has been incorporated as an essential component of anti-corruption programmes of many governments, major international organisations, as well as international and national NGOs. Public interest whistleblowing is increasingly being seen as a human right worthy of formal international recognition (Wolfe et al. 2014). The right of citizens to report wrongdoing is a natural extension of the right of freedom of expression and is linked to the principles of transparency and integrity (Transparency International 2013).

All major anti-corruption instruments now recognise the necessity for whistleblower protection in both the public and private sectors (OECD 2012). For example, signatories of the United Nations Convention against Corruption are obliged to have whistleblower protection legislation. Transparency International's International Principles for Whistleblower Legislation provides good practice guidance for formulating new and improving existing whistleblower legislation:

- Individuals must be protected from all forms of retaliation, disadvantage or discrimination at the workplace resulting from whistleblowing.

- The identity of the whistleblower may not be disclosed without the individual's explicit consent.
- An employer must clearly demonstrate that any measures taken against an employee were in no sense motivated by a whistleblower's disclosure.
- An individual who makes a disclosure demonstrated to be knowingly false is subject to employment sanctions and those wrongly accused shall be compensated.
- Employees have the right to decline to participate in corrupt, illegal or fraudulent acts.
- Whistleblowers whose lives or safety is in jeopardy are entitled to receive personal protection measures (Transparency International 2013).

For more information: [International Principles for Whistleblower Legislation](#).

In addition to providing guarantees against retaliation, some whistleblower protection laws have established compensation schemes that remunerate individuals for losses occurred as a result of their disclosure. For instance, the UK's Public Interest Disclosure Act 1998 provides a reimbursement which is assessed on the losses suffered by a whistleblower from submitting a disclosure (Bowden 2005). The act applies to workers within any sector and protects them from retaliation from their employer, including dismissal, disciplinary action or a transfer that otherwise would not have happened (Bowden 2005). Whistleblowers may be awarded compensation if the health or safety of the individual is, or is likely to be endangered, a miscarriage of justice has occurred or the environment is being damaged. The informant is then entitled to the settlement payment.

Benefits of introducing whistleblower reward programmes

Beyond protection against retaliation and compensation for losses, reward programmes provide financial incentives for reporting wrongdoing. Such schemes aim to counteract the disincentives caused by the personal risks whistleblowers face. Despite some similarities, reward programmes are fundamentally different from compensation schemes in that they provide an award of funds rather than simply a remuneration if losses have occurred. They either come in the form of bounty schemes or *qui tam* laws.

Bounty schemes are a simple cash-for-information programmes that award a fixed sum of money to whistleblowers whose information leads to a successful prosecution. *Qui tam* laws allow the whistleblower (known as the relator) to bring a lawsuit on behalf of the government if fraud has been committed. The relator is then eligible for a portion of the recovered funds if successful.

Countries such as the UK and Australia have strong whistleblower protection legislation that entail compensation but there has been a relatively slow uptake of reward programmes worldwide (Faunce et al. 2014).

The evidence on the effectiveness of whistleblower reward programmes is mixed. Some research suggests that they increase the quantity of disclosures while other studies conclude that they do not. For instance, proponents of the programme cite its ability to incentivise hesitant whistleblowers. Opponents to the schemes highlight the possibility of monetary rewards undermining the morality of blowing the whistle. The following sections outline the primary arguments for and against reward programmes.

Increasing the quantity of disclosures

While protection schemes may negate the severity of personal risks caused by whistleblowing, some research contends that reward programmes are even more effective at counteracting the possible dangers. Rewards go further than reimbursement for damages and motivate whistleblowers through awards of funds.

Research into the behaviour of managers and employees induced by the US bounty scheme, the Dodd-Frank Act, has demonstrated that employees will perform a cost-benefit analysis when considering whistleblowing (Frank, Moser and Simons 2016). For incentives to be effective, the rewards must be high enough to compensate for retaliation charges (Frank, Moser and Simons 2016). The study concluded that if rewards fulfil this condition then they will support an increase in whistleblowers (Frank, Moser and Simons 2016). This behavioural theory is apparent in the U.S. under its reward programmes. Increased monetary incentives has led to an "unprecedented" number of investigations and greater recoveries: the whistleblowers have been instrumental in protecting taxpayers from the costs of fraud (Kohn 2014).

Public awareness

Rewards to whistleblowers are often given media coverage, which may help to change wider attitudes on the act of blowing the whistle. According to research by UK-based City law firm RPC, the number of informants working in financial and professional services rose primarily through greater public awareness of the option of whistleblowing (Topham 2015). Rewards may then have a twofold effect on the number of disclosures: they garner public attention that then leads to an increase in the number of whistleblowers coming forward.

Additionally, rewards work towards ending the stigmatisation of whistleblowers. Law firms who work with whistleblowers have praised the US bounty scheme, the Dodd-Frank Act, stating that it both incentivises informants and helps to change the traditional stigmas of whistleblowing (Kasperkevic 2015). They argue that, as the government takes greater control over whistleblower protection and reward programmes, this leads to public awareness of the importance of reporting wrongdoing and thus encourages more people to come forward. (Kasperkevic 2015).

Cost effectiveness

Reward programmes may lower public spending as they are less costly than traditional investigative methods. Police officers and investigators consume real resources, whereas whistleblower rewards are simple wealth transfers (Givati 2016). Research into the theory of whistleblower rewards has shown that, as long as the risk of a false report is low enough, using a whistleblower and a reward programme is more economical than relying on police officers (Givati 2016). Such cases with a low risk of false reports include instances of tax evasion or environmental damage where the falsification of evidence is unlikely (Givati 2016).

Internal compliance

Reward programmes can help to strengthen already robust internal compliance and whistleblowing mechanisms within organisations. Paying whistleblowers could counteract the negative social pressures that favour silence and may alleviate the pressures of an anti-informant culture within corporations (Bradley 2015). This would result in a more compliant, transparent and accountable workplace culture. In addition, rewards may

encourage companies to take internal compliance and monitoring more seriously as the offer of money means that their employees have more incentive to expose any wrongdoing.

Cartel deterrence

A cartel's anti-competitive behaviour is weakened through the introduction of whistleblower rewards. If there are financial incentives from whistleblowing then those who have knowledge of cartel activities must be prevented from exposing misconduct through either threats or bribes (Stephan 2014). This makes existing infringements less stable and encourages distrust between cartel members (Stephan 2014). The efficiency of the cartel is reduced as trust among members decreases and the costs of bribery increase to match the size of the whistleblower reward (Stephan 2014). The cartel may also choose to reduce the number of people in each firm that are directly involved in order to diminish the risks caused by reward programmes.

Indication of effectiveness

Research has shown that the quantity of disclosures will increase as long as the rewards offered are sufficiently high. There are still considerable risks facing whistleblowers and, as such, the positive effects of whistleblowing must outweigh the negative effects (Frank et al. 2016). Analysis concludes that as the personal cost of whistleblowing increases, a higher reward is required to induce reports and maintain deterrence (Givati 2016). If done in this way, the quantity of disclosures will rise. Similarly, work on cartel prevention maintains that a strong monetary incentive will motivate people with information on cartel behaviour to come forward as long as the rewards are sufficiently high (Stephan 2014).

Other studies conclude that whistleblowers driven by substantial rewards and bounties allow corporate information to be disseminated in a timely and accurate way to public authorities (Howse and Daniels 1995). The concerns about these schemes are not so serious as to prevent the adoption of such mechanisms (Howse and Daniels 1995).

Similarly, a case has been made for the consideration of some form of globalisation of the core features of the US reward programmes (Faunce et al. 2014). It is argued that developing a trade-based global model of financial rewards for informants of corporate fraud

may begin the slow process of re-democratising the international trade regime (Faunce et al. 2014).

Analysis of the impact of the US *qui tam* scheme, the False Claims Act (FCA), looked at all reported fraud cases in the country between 1996 and 2004. The breakdown concluded that monetary incentives did indeed motivate people to blow the whistle and increase the number of disclosures (Kohn 2014). The study proposed that there is no evidence to support the view that monetary incentives cause negative effects such as false reports (Kohn 2014). It argues that the failure of nations to enact whistleblower reward laws has resulted in foreign nationals seeking protection under the US whistleblower reward programme if such mechanisms do not exist within their own countries (Kohn 2014).

Disadvantages of providing incentives to whistleblowers

Despite evidence of reward programmes encouraging whistleblowing, other studies suggest the contrary. When considering the introduction of reward programmes into British legislation, the Bank of England concluded that there is no empirical evidence of rewards leading to an increase in quantity or quality of disclosures (Bank of England 2014). Their analysis was based upon the most internationally well-known bounty programme, the Dodd-Frank Act, and concluded that the introduction of similar bounties within the UK would be unlikely to increase the number of successful prosecutions (Bank of England 2014).

False reports

Reward programmes may have the unfavourable effect of generating moral issues regarding whistleblowing. Rewards could lead to false accusations of misconduct as individuals may view the incentives as an opportunity to pass on speculative rumours or fabricate evidence (Givati 2016). As rewards for whistleblowing increase so does the risk of false reports, meaning that it would be desirable to provide no reward and avoid the social cost of a false report (Givati 2016). Opportunistic whistleblowers may encourage corporations into financial settlements to avoid reputational damage and bypass the criminal court system all together (Givati 2016).

A study into incentive-based compliance mechanisms has suggested that, as a reward's size is based upon

the seriousness and severity of the wrongdoing, whistleblowers may report later rather than sooner to increase their monetary gain (Howse and Daniels 1995). To successfully recover a reward, the informant must provide a sufficient amount of evidence of misconduct. Therefore, whistleblowers may wait until they have assembled a substantial body of evidence before blowing the whistle; these delays may result in evidence being destroyed or rendered unavailable by guilty parties (Howse and Daniels 1995).

Entrapment

Incentives may cause a rise in entrapments, whereby an individual entraps others into an insider conspiracy and then blows the whistle to receive the monetary gains (Bank of England 2014). As the reward is often determined by the percentage of the total penalties assessed against the corporation, a whistleblower has an incentive to increase the amount of wrongdoing by other employees as much as possible (Howse and Daniels 1995).

These risks may undermine any improvements in cultural perceptions of whistleblowers. In a survey on whistleblowing, respondents who were most concerned about reward programmes reasoned that they could lead to inappropriate reports being brought forward (Tracey and Groves, no date). Rewards may also harm a business's success by causing distrust among employees and damaging teamwork from behaviour, such as informants breaking into confidential files for evidence (Howse and Daniels 1995).

2 MAIN FEATURES OF REWARD PROGRAMMES

Scope

Reward programmes in the form of bounty schemes target individuals or groups of individuals who have insider knowledge of any past, present, or likely to occur illegality, economic crime, miscarriage of justice, waste or misappropriation by an organisation, degradation of the environment, or the endangerment of the health or safety of an individual or community (Faunce et al. 2014). Bounty schemes may apply to either public or private sector organisations. Their intention is to uncover a wide range of improprieties against public good.

Qui tam laws are more specifically aimed at acts of fraud committed against governmental programmes. They are filed by people who are not affiliated with the government and typically involve industries such as healthcare, military or other government spending programmes. For example, through the US False Claims Act, a lawsuit is filed by any individual who has knowledge of fraud against the government (Bank of England 2014). These individuals may be either an organisational member and therefore a whistleblower or an extra-organisational member and therefore a bell-ringer (Faunce et al. 2014).

However, there are a number of cases where an individual is unable to claim a reward. In the case of the US Dodd-Frank Act, rewards are not to be paid to whistleblowers who work for regulatory agencies, the Department of Justice, a self-regulatory organisation, the Public Company Accounting Oversight Board, a law enforcement organisation or those who are convicted of a criminal violation related to the securities law in question (Bradley 2015).

Process

While many describe *qui tam* laws and bounty schemes as the same, the crucial difference lies with the role of the whistleblower in bringing action (Vaughn 2012). Within bounty schemes, enforcement discretion rests solely with the government regulator or law enforcement agency. The whistleblower can submit evidence to the relevant authority and, if the evidence proves that misconduct has been committed, the individuals must then rely upon the designated body to file the charges and collect funds. The selected reward is then transferred to the whistleblower.

In contrast, *qui tam* laws allow the individual the private right of action (Vaughn 2012). The whistleblower may hire an attorney once they have gathered evidence and place the *qui tam* action under seal (Faunce et al. 2014). Once under seal, a government body will then oversee the evidence and assess the whistleblower/relator (Faunce et al. 2014). At this point, the government may choose whether or not to intervene and join the case (Faunce et al. 2014). If the government does not intervene, it allows for a greater involvement of the whistleblower throughout the proceedings.

Requirements

The prerequisites for rewards vary from country to country. Some may insist that, to be rewarded, the whistleblower must first report the wrongdoing through internal mechanisms and, if those fail, report externally. Other countries do not require internal reporting. For example, the Ontario Securities Commission does not require any internal reporting to receive a reward.

Gaining information independently is also a common requirement of reward programmes, and the whistleblower must have come forward with this evidence voluntarily. Originality of information is also often a requirement for eligibility.

The outcome of the case is another major factor in the requirements. Many jurisdictions have a minimum amount of recovered funds needed to award the whistleblower, such as the Dodd-Frank Act which necessitates that recovered funds must be over US\$1 million to qualify for an award (SEC 2011).

The high number of requirements has often led to criticism of reward programmes, as some studies suggest that the quantity of requirements lead to very few whistleblowers actually receiving rewards (Bank of England 2014).

Amount of reward

The amount of award differs between countries, but it is usually predetermined before the case comes to court by the relevant government body or court. For example, under the False Claims Act, if the evidence leads to successful prosecution, and the Department of Justice (DOJ) has chosen to intervene, then the relator is eligible for 15 to 25 per cent of the damages that the government recovers (Faunce et al. 2014). If the DOJ does not intervene then the relator may be awarded 25 to 30 per cent of recovered funds (Faunce et al. 2014). Under the bounty scheme, the whistleblower may be awarded 10 to 30 per cent of funds recovered (SEC 2011).

Most reward programmes have designated portions of the recovered funds to award the whistleblower with, or they may take the rewards from a dedication fund composed of voluntary donations and previously

recovered funds (Faunce et al. 2014). The size of the reward often depends upon the severity of the crime, the quality of evidence provided by the whistleblower and the level of involvement from the whistleblower.

There is a debate about the size of monetary rewards. Some research proposes that bounties should be low, ranging from 1 to 3 per cent of the penalty recovered (Currell and Ferziger 2000). This is because it may increase tips from whistleblowers for whom internal moralistic motivation alone will not induce action, but will also mitigate the risk of false reports that are driven by large sums of reward money (Currell and Ferziger 2000).

However, other studies calculate that a whistleblower in the US, for example, who earned US\$80,000 a year would need a much higher reward of US\$4 million to US\$5 million to cover the prospective loss of income, loss of promotions, legal defences, and the risk of social, family and personal pressures (Stephan 2014).

Potential issues

Whistleblower reward programmes often require lengthy and complex regulations. Critics that have raised concerns over the potential risk of reward programmes led the legislators of the Dodd-Frank Act to add complex rules to balance the disadvantages of financial incentives (Bradley 2015). This means that potential whistleblowers may struggle to navigate the system without external support. Many will turn to lawyer representatives to navigate the system, which is both costly and poses the question of whether the industry of representing whistleblowers itself should be regulated (Bradley 2015).

Anonymity is another concern in reward programmes. Many schemes do not allow for whistleblowers to remain anonymous. For example, the Ghanaian Whistleblower Act 2006 only rewards informants once they have reported to a chief or elder in addition to a range of government offices and institutions, which prevents the option of confidentiality (Faunce et al. 2014). However, many programmes do combine rewards with added retaliation protections such as the opportunity to provide evidence through lawyers, therefore maintaining confidentiality.

Further recommendations

Recognition of whistleblowing as an act of civic courage

As shame is an effective sanction, social honour can serve as another form of incentive (Vaughn 2012). This may be achieved through formal awards given by agencies, businesses, professional groups and peers (Vaughn 2012). Such recognition supports the whistleblower and aids emotional recovery of whistleblowers while restoring their reputation and standing (Vaughn 2012). A number of whistleblower advocacy groups provide awards and recognition to whistleblowers, for example see:

[The Sam Adams Award](#)

[The Paul H. Douglas Award for Ethics in Government](#)

[The Ridenhour Prizes](#)

Transparency

In the US, annual reports on whistleblowing disclosures and the manner with which they are dealt with are being published for public use (Bank of England 2014). Greater transparency of the processes and outcomes of whistleblowing are effective as they boost the confidence of prospective informants who feel they are unable to report internally (Bank of England 2014). Studies demonstrate that online access to information on whistleblowing results in an increase in prosecutions of corruption (Goel and Nelson 2013). This research suggests that a heightened public awareness on the option of whistleblowing may be as effective as the quantity and quality of the laws themselves (Goel and Nelson 2013).

Cultural change

Other studies on the psychology of whistleblowers have suggested recommendations for increasing the number of disclosures within organisations. They propose that whistleblowing represents a trade-off between two moral values – fairness and loyalty – and that when fairness increases in value when whistleblowing is more common and, likewise, when loyalty is valued it is less likely (Dungan, Waytz and Young 2015).

In light of these conclusions, it is suggested that, to motivate a larger number of whistleblowers, organisations must build a community that values constructive dissent as well as loyalty. Management should openly support constructive dissent to improve their company's culture of openness and

accountability. This would result in those with dissenting opinions being rewarded and viewed as effective leaders (Dungan, Waytz and Young 2015).

Similarly, a study into the implementation of whistleblower policies in the workplace concluded that the most efficient means of increasing whistleblowing is to change an organisation's culture through institutionalising "an ethical way of doing things" (Senekal and Uys 2013). Changes in internal cultural attitudes, brought about by effective internal mechanisms, are not only just as effective as external legislation but a necessary complement to external legislation.

3 COUNTRY EXAMPLES

US

Main features of the scheme

The US has long relied upon private citizens as a means of law enforcement and employs the most widely known whistleblower reward programme (Bradley 2015). Incentives are facilitated through the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 922 of the act states that the US Securities and Exchange Commission (SEC) will pay whistleblowers who voluntarily provide original information that leads to the recovery of funds over \$1 million (SEC 2011). These individuals are reliant upon the SEC to file charges and collect fines to fund any reward (Faunce et al. 2014). Whistleblowers are awarded 10 to 30 per cent of the total funds recovered, and employers are prohibited from retaliating against whistleblowers (SEC 2011). Informants have the option to first report through internal mechanisms and will still be eligible for reward if they report the same information to the SEC within 120 days.

Another option is for an informant to file a claim under the False Claims Act through a *qui tam* lawsuit if fraud against a government programme is alleged (Bank of England 2014). The US Supreme Court stated that "the [FCA] was intended to reach all types of fraud, without any qualification, that might result in financial loss to the Government" (Faunce et al. 2014). An individual, called a relator (an organisational member) or bell-ringer (an extra-organisational member), may file a false claims complaint. This is initially completed through a no-win no-fee attorney and the *qui tam*

action is filed under seal *in camera* while the Department of Justice monitors the case and assesses the relator to prevent false claims (Faunce et al. 2014). The government may then decide whether to intervene or join the case (Faunce et al. 2014).

The FCA has been applied to a number of different cases including: data suppression, international bribery, scientific misconduct and bias in drug trials in sectors such as medical, financial and defence contracting (Faunce et al. 2014). If prosecution is successful, the informant is eligible for 15 to 25 per cent of recovered funds if the Department of Justice intervenes and between 20 to 30 per cent if the government does not (Faunce et al. 2014).

Limitations

Not all research concludes that the use of financial incentives by US regulators is effective. Opponents of the Dodd-Frank Act suggest that the quality or quantity of disclosures has not increased since the introduction of rewards and that they require a complex and costly governance structure (Bank of England 2014). Others have analysed the FCA and concluded that it creates moral hazards, such as malicious reporting, conflict of interest in court and entrapment (Adesiyan, Wright and Everitt 2014).

Indication of effectiveness

In 2014, it was announced that four whistleblowers collected more than US\$170 million from bringing a False Claims Act lawsuit against the Bank of America for mortgage fraud (Givati 2016). By this year, it was also recorded that the total amount of money recovered through the FCA had exceeded US\$18 billion (Givati 2016). As such, the FCA has been proven as a successful anti-fraud measure that leads many to recommend its application on a global level (Faunce et al. 2014). It has also been shown to reduce government prosecution costs through diminished investigation times (Faunce et al. 2014).

The SEC does not only accept tips from US citizens regarding fraud, corruption and misconduct. The Dodd-Frank Act has transnational application and can be applied to violations of the Foreign Corrupt Practices Act (FCPA) (Kohn 2014). Section 922 of the Dodd-Frank Act states that individuals can assist the SEC in uncovering securities violations including FCPA violations (Kohn 2014). The FCPA is an anti-

bribery law that prohibits making illicit payments to foreign officials and requires companies whose securities are listed in the US to meet its accounting provisions. In 2014, the SEC reported to Congress that they had received tips and awarded applications from countries ranging from the UK, Brazil, South Africa and India (Kohn 2014). For more information on the intersection of the Dodd-Frank Act and the FCPA see: [Intersection of the Dodd Frank Act and the FCPA](#)

Canada

Main features of the scheme

In 2011, the Ontario Securities Commission (OSC) announced that it was implementing a programme of financial rewards for those who voluntarily provide information about corporate misconduct and misleading financial disclosures through its Office of the Whistleblower (Faunce et al. 2014). This legislation is largely based upon the bounty scheme of the US Dodd-Frank Act and the protection laws in Australia and the UK (Hassleback 2016).

The Office of the Whistleblower's guide states that an entitled whistleblower may be an individual or group of individuals who are aware or suspect a violation of Ontario securities law and voluntarily report that information online or by mail. The types of misconduct that are: illegal insider trading or tipping, fraud, corporate financial statements and unregistered trading. Information must be original and obtained through independent knowledge or independent analysis. If informants' evidence results in a final order imposing monetary sanctions, then they are awarded with cash rewards of between 5 to 15 per cent of the recovered funds, capped at CAN\$5 million (approximately US\$3.7 million) (Neal 2016).

Limitations

The Office of the Whistleblower's rewards are limited to financial fraud. They do not cover wider corrupt practices and there is currently no mechanism to collect a reward from such disclosures. Whistleblowers are also not required to report internally to be eligible for a reward, which has led several lawyers to point out that this may have a negative impact on internal reporting (Neal 2016).

Unlike the SEC's programme, there is no leniency for the culpable whistleblower's role in the crime, and those who report run the risk of opening themselves

up to liability (Neal 2016). The OSC does not offer anonymity; although a whistleblower may initially hire a lawyer to maintain confidentiality, this cannot be guaranteed at later stages (Neal 2016).

Indication of effectiveness

Ontario is the first Canadian jurisdiction to offer financial incentives. Kelly Gorman, the first chief of the OSC's Office of the Whistleblower stated that the incentive programme has assisted the alteration of the cultural stigma attached to whistleblowing and compensated those for personal and professional risks (Hassleback 2016).

South Korea

Main features of the scheme

The Protection of Public Interest Whistleblowers was passed in 2011 and offers protection and financial rewards for government and corporate whistleblowers who report violations relating to safety, health, the environment, consumer protection and fair competition (Wolfe et al. 2014). Wrongdoing can be reported to the Anti-Corruption and Civil Rights Commission (ACRC) which then, if disclosures are accepted, sends them to relevant agencies for investigation (Wolfe et al. 2014). The ACRC offers whistleblowers 4 to 20 per cent of recovered funds, up to US\$2 million, and provides protections such as safeguarding against the cancellation of permits, licenses and contracts (Wolfe et al. 2014).

For cartel offences, the Korean Fair Trade Commission (KFTC) empowered its competition laws under the Monopoly Regulation and Fair Trade Act, which were enacted as part of the government's efforts to liberalise markets, abolish direct price controls and weaken cartel activity (Stephan 2014). The KFTC introduced a formal rewards mechanism for informants in cartel cases in 2002, and, in 2004, set out where rewards would be offered and excluded in situations where, for example, evidence is insufficient (Andreas 2014). The size of reward is determined by a committee whose role it is to ensure fairness and transparency, and informant protection is guaranteed by enforcement decree.

Limitations

The first few years of the anti-trust programme under the KFTC were considered unsuccessful as it

generated fewer than 10 reports within a four-year period (Sullivan, Ball and Kiebolt 2011). This was attributed to the negative perception of informants in the country as well as the previously low cash rewards.

Indication of effectiveness

The Protection of Public Interest Whistleblowers is considered to be one of the world's most comprehensive whistleblower laws (Wolfe et al. 2014). From 2002 to 2013, the ACRC received 28,246 reports of wrongdoing and recovered the equivalent of US\$60,300,000 which resulted in US\$6,200,000 of rewards (Wolfe et al. 2014). As of May 2014, the largest reward paid was US\$400,000 from a case in which a construction company was paid US\$5,400,000 for sewage pipelines that were not built, and resulted in 11 people facing imprisonment, with all funds recovered (Wolfe et al. 2014).

After an initially poor reception, the KFTC increased the reward amount in 2005 to KRW100 million (US\$94,000) and guaranteed confidentiality for whistleblowers (Stephan 2014). As a result, the country now has one of the most active cartel enforcement regimes in the world: in 2008 alone, the KFTC imposed KRW205 billion (US\$192,000,000) in administrative fines in 43 cartel cases (Stephan 2014). The cases have varied from evidence of cartel existence and bid rigging scandals (Stephan 2014). Proponents of reward programmes often cite South Korea as evidence that incentives result in increased cartel reporting (Stephan 2014).

Ghana

Main features of the scheme

The Ghanaian Whistleblower Act 2006 was the first African legislation to introduce a bounty programme (Faunce et al. 2014). A whistleblower may report any "impropriety" which includes any past or near future illegality, economic crime, miscarriage of justice or misappropriation by a public institution. This information must then be reported to a chief or elder, a religious body or a range of government offices (Faunce et al. 2014). The disclosure may be made in writing or orally and, if it leads to the arrest and conviction of the accused person, a reward shall be given to the whistleblower (Parliament of the Republic of Ghana 2006).

The amount determined by the Whistleblower Act is either 10 per cent of the money recovered or an amount that is determined by the attorney general, in consultation with the Inspector General of police (Parliament of the Republic of Ghana 2006). The financial rewards are generated through a dedication fund that comprises of voluntary contributions allocated by parliament, including amounts recovered from fraud (Faunce et al. 2014).

The Whistleblower Act also designates informants the right to sue for victimisation within the high court (Faunce et al. 2014). Informants are able to apply for police protection if there is a reasonable cause to believe that their lives or property, or that of their family, is endangered (Parliament of the Republic of Ghana 2006). Protection covers risks of dismissal, suspension, redundancy, denial of promotion, harassment or threats as a result of the disclosure (Parliament of the Republic of Ghana 2006).

Limitations

Research suggests that, while the enactment of whistleblower legislation has been a commendable effort, there has been little political will in following the law (Domfe and Bawole 2011). There have been recent cases where, despite the strong protection laws, whistleblowers are still at risk of retaliation. For example, when the chief accountant and the chief director of the Ministry of Youth and Sports revealed misappropriation of public funds in 2008, they were asked to leave their positions, with one being surcharged with an amount of US\$20,000 for lack of discretion in approving payment for the minister (Domfe and Bawole 2011). The attorney general justified the action taken against the whistleblowers and further stated that the principal accountant did not qualify as a whistleblower as he did not submit anonymously (Domfe and Bawole 2011).

Hungary

Main features of the scheme

Hungary has enlisted a whistleblower reward scheme within the anti-trust context. An amendment of the Hungarian Competition Act in 2010 under Article 79/A (1) and (3) states that informants who provide "indispensable" information about hardcore cartels may be entitled to a reward from the Hungarian Competition Authority (Hungarian Competition Authority 1996). A hardcore cartel refers to

competitors who fix purchase or selling prices, divide the share of markets, rig bids or fix production quotas (Hungarian Competition Authority 1996). “Indispensable” information also includes information that leads the court to issue a warrant to conduct an unannounced inspection that leads to the gathering of evidence (Hungarian Competition Authority 1996).

Rewards are only offered to informants who provide timely evidence about hardcore cartel activity and is limited to 1 per cent of the fine imposed by the Competition Council, with a maximum of HUF50 million (approximately US\$180,000) (Hungarian Competition Authority 1996). No reward is offered to the informant if the evidence has been obtained as a result of a crime or an offence (Hungarian Competition Authority 1996).

Limitations

Some studies suggest that the size of the bounty for information on cartels is inadequate to incentivise whistleblowers (Stephan 2014). The Hungarian Competition Act only rewards whistleblowers who provide evidence on cartel activities. While protection is provided for those providing information on corruption and misconduct, there is no formalised reward system for these whistleblowers.

Pakistan

Main features of the scheme

The Competition Commission of Pakistan introduced a rewards programme to uncover cartel activity through its Guidelines on the Reward Payment to Informants Scheme. The scheme combines financial rewards with added protections, such as anonymity (Faunce et al. 2014). Payments range from Rs200,000 to Rs500,000 (USD \$1,900 to \$4,700) and are calculated through the usefulness of the information, the level of the informant's contribution, the severity of the cartel misconduct and the efforts made by the informant (CCP no date). Whistleblowers in Pakistan are also offered protection under the scheme: anonymity is an option and specially trained officers dealing with the case safeguard the informant's identity (CCP no date).

The Federal Board of Revenue offers a similar mechanism for the public to report evasion in sales tax, income tax or corrupt practices of inland revenue

officials (Government of Pakistan 2016). Whoever reports the concealment of tax evasion, corruption or fraud, and the information results in collected tax, is eligible for a reward. For Rs500,000 (approximately US\$4,769) or less of tax evaded, the informant may receive 20 per cent of the tax, and for over Rs1 million (approximately US\$9,538), the informant may receive up to 5 per cent of recovered funds (Government of Pakistan 2016).

Limitations

These bounty schemes are limited to cartel activity and fraud. There is no reward scheme for general corrupt practices. Analysis also suggests that the amount of bounty provided in Pakistan for cartel whistleblowers is not large enough to incentivise the majority of informants (Stephan 2014).

4 REFERENCES

- Adesiyan, Ade, Nick Wright and Kim Everitt. 2014. *UK: FCA and PRA Publish Conclusions on the Impact of Financial Incentives for Whistleblowers*. <http://www.lexology.com/library/detail.aspx?g=3890b38a-4faa-494b-8743-7a92a632c8fe>
- Ayagre, Philip, and Julius Aido-Buameh. 2014. *Whistleblower Reward and Systems Implementation Effects of Whistleblowing Organisations*.
- Bank of England. 2014. *Financial Incentives for Whistleblowers*. <https://www.fca.org.uk/publication/financial-incentives-for-whistleblowers.pdf>
- Bowden, Peter. 2005. *A Comparative Analysis of Whistleblower Protection*. <http://www.unisa.edu.au/Documents/EASS/HRI/GIG/bowden-whistleblower.pdf>
- Bradley, Caroline. 2015. *Rewards for Whistleblowing*.
- Competition Commission of Pakistan. *Revised Guidelines on "Reward Payment to Informants Scheme"*. http://www.cc.gov.pk/images/Downloads/guidelines/reward_paymentannexure_ii.pdf
- Currell, Daniel and Marsha J. Ferziger. 2000. *Snitching for Dollars: The Economics and Public Policy of Federal Civil Bounty Programs*.
- Domfeh, Kwame Ameyaw and Justice Nyigmah Bawole. 2011. *Muting the Whistleblower through Retaliation in Selected African Countries*.
- Dungan, James, Adam Waytz and Liane Young. 2015. *The Psychology of Whistleblowing*. <https://pdfs.semanticscholar.org/6098/8321ce3d5155b98313384609912e15d4449d.pdf>

Faunce, Tom, Kim Crow, Tony Nikolic and Frederick M. Morgan. 2014. *Chapter 16: Because they have Evidence: Globalizing Financial Incentives for Corporate Fraud Whistleblowers.*

Frank, Benedikt, Henrik Moser, and Dirk Simons. 2016. *A Carrot Without a Stick - Whistleblowing Rewards under the Dodd-Frank Act.*

Givati, Yehonatan. 2016. *A Theory of Whistleblower Rewards.*
<http://www.journals.uchicago.edu/doi/abs/10.1086/684617>

Government of Pakistan. 2016. *Federal Board of Revenue Notification.*
<http://rahmatlaw.com/news/304-05052016.pdf>

Goel, Rajeev K., and Michael A. Nelson. 2013. *Effectiveness of Whistleblower Laws in Combating Corruption.*
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2268429

Hassleback, Drew. 2016. *Ontario Securities Commission Will Now Pay Up to \$5 Million for Tips as First in Canada to Offer Whistleblower Rewards.*

Howse, Robert, and Ronald J. Daniels. 1995. *Rewarding Whistleblowers: The Costs and Benefits of an Incentive-Based Compliance Strategy.*

Hungarian Competition Authority. 1996. *On the Prohibition of Unfair and Restrictive Market Practices.*
http://www.gvh.hu/en//data/cms1033354/Hungarian_Competition_Act_20150901_.pdf

Kasperkevic, Jana. 2015. *How Do You Make Millions by Doing Good? Become a Whistleblower.*
<https://www.theguardian.com/business/2015/may/14/whistleblower-lawyers-corporations-us-government-awards>

Kohn, Stephen M. 2014. *The Importance of Whistleblower Rewards in Combating International Corruption.*
<http://www.whistleblowers.org/storage/docs2/anti-corruption-report.pdf>

Neal, Brooke. 2016. *Ontario Securities Commission Whistleblower Protection Program.*

OECD. 2011. *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.*
https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

OECD. 2012. *Whistleblower Protection: Encouraging Reporting.*
<http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>

Parliament of the Republic of Ghana. 2006. *The Whistleblower Act 2006.*
<http://www.drasmuszodis.lt/userfiles/Ghana%20Whistleblower%20Act.pdf>

Senekal, Anton, and Tina Uys. 2013. *Creating an Ethogenic Organisation: The Development and Implementation of a Whistleblowing Policy.*

<http://search.proquest.com/openview/63cd42a25a13ce3c4dd41f0bc68b1b41/1?pq-origsite=gscholar&cbl=226535>

Stephan, Andreas. 2014. *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool?*

Sullivan, Kevin R., Kate Ball and Sarah Kiebolt. 2011. *The Potential Impact of Adding a Whistleblower Reward Provision to ACEPERA.*
http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/oct11_sullivan_10_24f.authcheckdam.pdf

Topham, Gwyn. 2015. *UK Tax Authorities Pay Record £605,000 to Informants.*
<https://www.theguardian.com/politics/2015/jun/15/uk-tax-authorities-hmrc-record-informants>

Tracey, John, and Tracey Groves. *Should Whistleblowers Get Cash Rewards?*
<https://www.pwc.co.uk/services/forensic-services/insights/rewarding-whistleblowers.html>

Transparency International. 2009. *The Anti-Corruption Plain Language Guide.*
https://www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/TI_Plain_Language_Guide_280709.pdf

Transparency International. 2013. *International Principles for Whistleblower Legislation.*
http://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation

Transparency International. 2013. *Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU.*

US Securities and Exchange Commission. 2011. *Whistleblower Program.*
<https://www.sec.gov/spotlight/dodd-frank/whistleblower.shtml>

Vaughn, Robert G. 2012. *The Successes and Failures of Whistleblower Laws.*
http://www.e-elgar.com/shop/the-successes-and-failures-of-whistleblower-laws?__website=uk_warehouse

Wolfe, Simon, Mark Woth, Suelette Dreyfus and A. J. Brown. 2014. *Whistleblower Protection Laws in G20 Countries: Priorities for Action.*

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