



Ethical and Legal Implications of Whistleblowing: A View from United Arab Emirates

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ABSTRACT

The paper seeks to dissect the meaning, people's understanding, effects and consequences of whistleblowing. It also tries to define the implications the act has as laid down in United Arab Emirates (UAE) law. It spells out the major concerns that exist about whistleblowing in the UAE and the world more generally. There exist several differences between the UAE law and that of other (mainly western) countries regarding whistleblowing. These differences affect the overall understanding in the region, the frequency of reporting cases occurring and the penalties that result. This has a number of implications if viewed from a corporate viewpoint, particularly where companies are operating in a number of jurisdictions as is increasingly common. Given that domestic operators require current information, as do transnational operators entering the UAE market, the paper concludes by highlighting the existing and impending legislation that protect (or fail to protect) whistleblowers in the UAE and the laws required in order to provide sufficient protection to whistleblowers.

Keywords: Whistleblowing, United Arab Emirates

RESUME

Le papier cherche à disséquer la signification, la compréhension, les effets et les conséquences du lancement d'alerte. Il tente également de définir les implications de la loi telles que définies dans la loi des Emirats Arabes Unis (EAU). L'article énonce les principales préoccupations qui existent au sujet du lancement d'alerte aux EAU et dans le monde en général. Il existe plusieurs différences entre la loi des EAU et celle des autres pays (principalement occidentaux). Ces différences affectent la compréhension globale dans la région, la fréquence des cas de signalement et les pénalités qui en résultent. Cela a un certain nombre d'implications si on le considère du point de vue de l'entreprise, en particulier lorsque les entreprises opèrent dans un certain nombre de juridictions comme cela est de plus en plus commun. Étant donné que les opérateurs nationaux ont besoin d'informations actuelles, tout comme les opérateurs transnationaux entrant sur le marché des EAU, le document conclut en soulignant la législation existante et imminente qui protège (ou ne protège pas) les lanceurs d'alerte aux EAU et les lois requises pour fournir une protection suffisante.

Mots-clés : Lanceur d'alerte, Emirats Arabes Unis

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1. INTRODUCTION

Whistleblowing is not a modern day phenomena but has been prevalent from earliest times. In fact, ancient Greek inscriptions bear testimony to its importance in legal proceedings and the functioning of the law. For instance, in an inscription dating from 330 B.C., a famous Athenian orator said in his prosecution speech against his rival, the controller of Athenian finances, ‘neither laws nor judges can bring any results, unless someone denounces the wrongdoers’.¹ Oxford dictionaries defines a whistle-blower as: ‘A person who informs on a person or organization engaged in an illicit activity.’² A more precise —and to a great extent more scholarly accepted — definition in the commercial context of the term ‘whistleblowing’ is:

‘a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organization, to an external entity having potential to rectify the wrongdoing’.³

Whistleblowing cases involving governmental actions are often highly sensitive and attract significant media attention. The media in some instances are contacted directly by whistleblowers so as to ensure material is placed on public record and pressure thereby exerted for changes to be made that might otherwise never occur, or simply in the interest of greater ‘transparency’. For example, Edward Snowden had privileged access to highly sensitive data regarding US intelligence activities (and lack of government oversight) and disclosure had effects of international magnitude. This paper, however, discusses whistleblowing on a corporate level. It examines whistleblowing in the Middle East and the Gulf region, in particular, the UAE, due to its economic importance and the number of multinational corporations (domestic and foreign) now present, including those with interests in manufacturing, pharmaceuticals, finance, air and road transport, and construction⁴, as the country continues its thrust to diversify its economy away from its dependence on an oil and petrochemical base.⁵ It has been observed that globalization of business activities actually increases the probability of fraudulent activities within a corporation’s operations, hence yet again the increasing need for legislation in this arena. The paper also addresses the question of whether the existing laws and/or regulations in the UAE are sufficient and/or appropriate,

¹ Lykourgos speaking against Leokratis: Shikha Patheja, ‘System of Whistle Blowing in India’ (2016) 4(7) *International Journal of Scientific Research* 361.

² *Whistle-Blower - Definition of Whistle-Blower in English | Oxford Dictionaries* (2016) Oxford Dictionaries | English <<https://en.oxforddictionaries.com/definition/us/whistle-blower>>.

³ Peter B Jubb, ‘Whistleblowing: A Restrictive Definition and Interpretation’ (1999) 21(1) *Journal of Business Ethics* 77, 78.

⁴ Binsal Abdul Kader, ‘Diversification Raises Non-Oil Share of UAE’s GDP to 71%’ GulfNews, 18 April 2011, < <http://gulfnews.com/business/economy/diversification-raises-non-oil-share-of-uae-s-gdp-to-71-1.795268>> accessed 11 September 2017.

⁵ Ernst & Young whistleblower speaks out on conflict gold risks-video 25 February 2014 < <http://www.theguardian.com/business/video/2014/feb/25/ernst-young-whistleblower-conflict-gold-risks-video>> accessed 1 July 2017.

and provides recommendations/suggestions (if any) for the improvement of these laws and/or regulations.

It is simple to claim that wrongdoings are 'not ethical' by their very nature and therefore disclosing wrongdoings must be an ethical action. However, in reality, employees disclosing or testifying to illegal or wrong acts of an employer may face a moral dilemma, rendering the simple antithetically derived explanation meaningless. In terms of whistleblowing, there are always questions that are difficult to answer because of their dependence on human subjectivity. Examples include: how is a 'wrongdoing' itself defined? Are wrongdoings limited to contravening formal legislation or should they also be defined in terms of ethical and moral reasoning? A multinational corporation manufacturing in sweatshop-like conditions in its factories (or those of its contractors) might not violate laws, but from an ethical and moral standpoint, its actions could still be considered as wrong by some.⁶ Others viewing the same situation might advance the argument that sweatshop-like factories nevertheless provide otherwise absent employment and a livelihood for many families.⁷ To disclose the conditions domestically or the nature or location of garment manufacture to the broader market in relation to overseas (outsourcing) manufacturers and ultimately to consumers may then result in the (at least temporary) closure of factories and consequent loss of employment. Such disclosures have indeed led to campaigns to boycott certain manufacturers until changes are made to conditions or sub-contractors changed.⁸ Whistleblowers may also put themselves at physical risk, and thus their family's livelihood as well as that of others.⁹ Hence the multilayered ethical dilemma of the potential whistleblower as well as the demand for anonymity for whistleblowers,¹⁰ and/or for their protection by legislation.

Another subjective topic would be bribery. In some countries, it is considered a wrongdoing, prohibited by law and with punitive sanctions available where perpetrators are convicted; however, in others it may (though perhaps even equally against the law 'on paper') be common practice and considered a 'cost of doing business'. In this regard, it is worth noting that the Organization of Economic Cooperation and Development opened its *Anti-Bribery*

⁶ Isabelle Hunter, 'Crammed into Squalid Factories to Produce Clothes for the West on Just 20p a Day, the Children Forced to Work in Horrific Unregulated Workshops of Bangladesh' Daily Mail (Australia) 1 December 2015. <http://www.dailymail.co.uk/news/article-3339578/Crammed-squalid-factories-produce-clothes-West-just-20p-day-children-forced-work-horrific-unregulated-workshops-Bangladesh.html>.

⁷ Benjamin Powell, 'Sweatshops in Bangladesh Improve the Lives of their Workers, and Boost Growth' Forbes, 2 May 2013. <https://www.forbes.com/sites/realspin/2013/05/02/sweatshops-in-bangladesh-improve-the-lives-of-their-workers-and-boost-growth/#2aa0cc8674ce>.

⁸ Oxfam 'Are Your Clothes Made in Sweatshops?' (undated) <https://www.oxfam.org.au/what-we-do/ethical-trading-and-business/workers-rights-2/are-your-clothes-made-in-sweatshops/>.

⁹ 'Whistleblower Killed in Pune', Khaleej Times, 15 January 2010 <https://www.khaleejtimes.com/article/20100114/ARTICLE/301149897/1002>,

¹⁰ Juergen T Steinmetz, 'Whistleblower: Sleep Deprivation - Flydubai Worked Crew to Death', ETN eTurbo News Global Travel Industry News, 22 March 2016, <https://eturbonews.com/137303/whistleblower-sleep-deprivation-flydubai-worked-crew-death>; Janie Freed, 'Flying Tired: Airline Pilots on Tough Rosters Battle Fatigue' Sydney Morning Herald, 15 April 2016, <http://www.smh.com.au/business/aviation/flying-tired-airline-pilots-on-tough-rosters-battle-fatigue-20160413-go5fmo.html>.

Convention in the late 1990s.¹¹ Signing the convention indicated that ‘a country acknowledges that bribery should not be considered an appropriate means of doing business.’¹² As at July 2011, the Convention had 39 signatories, rising to 43 in early 2017. As at May 2017, UAE has yet to accede to this convention,¹³ nor have any of the Gulf States or Middle East and North Africa (with the exception of Israel), India, Bangladesh or Pakistan (and notably China), while the UK, US, Australia and the vast majority of European nations are among the signatories.¹⁴ In regard to bribery, however, the Kingdom of Saudi Arabia has specific anti-bribery legislation.

Companies operating in member states of the Gulf Cooperation Council (UAE, KSA, Bahrain, Oman, Qatar, Kuwait and Yemen) may also have their own policies seeking to guarantee whistleblower anonymity, but

‘this cannot be guaranteed within the context of allegations raised in the GCC. Anonymous allegations are not viewed as credible, and if the matter progresses to a police complaint and investigation, the identity of the whistleblower, if known, will be requested.’¹⁵

By far the largest problem for whistleblowers (whether in relation to fraud, bribery or other illegal or corrupt practices) is whether the information should be revealed in the first place and, if so, how. There are various ways to disclose information. Each disclosure can be categorized as follows, namely whether it involves (i) a formal or informal approach, (ii) anonymous or identified source, and (iii) disclosure to external entities or internally. Research has found nationality to be a key factor in determining the nature of any disclosure in terms of these dimensions, most likely reflecting the legislation and underlying culture of the country.¹⁶

The definition cited earlier states that whistleblowing is the act of disclosing information to an ‘external entity having potential to rectify the wrongdoing’.¹⁷ Especially in the case of whistleblowing related to a government (or ruler/s as is the case in some states) or to a government-owned entity, a major problem could be that there might not be an official entity in place to receive such information or to rectify any wrongdoing by governmental personnel or government owned entity. That is why the model of separation of powers (that is, the

¹¹ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. opened for signature 1997 (entry into force 1999) <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>.

¹² Exhibit 1.10 Countries Signing the OECD Anti-Bribery Conventions (as of July 2011) in Michael R Kinney and Cecily A Raiborn, *Cost Accounting: Foundations and Evolutions* (2013, 9th ed) 16.

¹³ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Opened for signature 1997 (entry into force 1999) <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>.

¹⁴ *Ibid.*

¹⁵ Sara Khoja, Rebecca Ford and Emma Higham, ‘Managing a Workforce in the GCC: Employment Law Report’ (Clyde and Co, CIPD, 2015) 11. https://www.cipd.ae/Images/managing-gcc-workforce_tcm22-26717.pdf.

¹⁶ Heungsik Park, ‘Cultural Orientation and Attitudes toward Different Forms of Whistleblowing: A Comparison of South Korea, Turkey, and the U.K.’ (2008) 82(4) *Journal of Business Ethics* 937.

¹⁷ Peter B Jubb, ‘Whistleblowing: A Restrictive Definition and Interpretation’ (1999) 21(1) *Journal of Business Ethics* 77, 78.

separation of the legislative, executive and judicial arms of government) is of crucial importance in cases of whistleblowing related to governmental entities. By limiting power of individual government institutions it aims to ensure freedom, provide equality, and most importantly in this context, prevent abuse of power.

2. WHISTLEBLOWING: GENERAL CONCERNS

Examples of whistleblowing are often not easy to evaluate and include various parties with different interests in disclosing certain information. In corporate whistleblowing, one has to be aware of the different parties affected and the impact the case will have on them. While share or stockholders of a corporation can neither be held responsible nor be blamed, nonetheless they are the ones who will suffer the most significant financial losses. Publicly listed companies in many countries have a duty of continual market disclosure of anything that may materially affect the share price. This clearly is the case where the detection of severe fraudulent activities is involved. Executives that had or should have had knowledge of such activities can be held responsible for a breach of their duty of care.

In terms of a lower level employee becoming aware of illegal fraudulent activities, their decision to disclose internally rather than externally may have ramifications for the individual involved. If a wrongdoing is clearly against the law and an employee fails to bring it to the attention of the authorities, he could eventually also be charged. Assuming this to be the case, it would be better for the respective individual to 'blow the whistle' before someone else does in order to avoid putting their freedom at risk even at the cost of their employment. An example of this is Sherron Watkins who was a key witness in the Enron fraud case. After finding out about the use of fraudulent accounting practices in the company, she sent an anonymous memo to the company's CEO. When the case unfolded several months later, she was accused of, and investigated for, not properly reporting these practices to an external entity that could have rectified this wrongdoing.

3. WHISTLEBLOWING IN THE UAE

Whistleblowing has long been a major problem for employees in the UAE. According to the Kroll Global Fraud Report 2015–2016¹⁸, the number of fraudulent activities that have been exposed in the Gulf region is the lowest in the world; however, this may not be because all businesses are virtuous, but due to the threat of stern legal action that can be taken against a whistleblower as well as the lack of statutory protection and support for the whistleblowers in the UAE as in much of the region. Therefore, employees are not willing to step forward and report illegal activities and practices taking place within the organizations, whether state-owned or private.¹⁹

¹⁸ 'Whistleblowers in the Gulf: Proceed with Caution' in Kroll Global Fraud Report 2015–2016, 23 November 2015, Kroll.com <<http://www.kroll.com/en-us/intelligence-center/articles/fraud/whistleblowers-gulf-proceed-caution>> accessed 10 December 2016.

¹⁹ David Batty 'Migrants building UAE cultural hub 'working in prison conditions'', 4 April 2015, <https://www.theguardian.com/global-development/2015/apr/04/migrant-workers-uae-saadiyat-island-abu-dhabi-battery-hens>> accessed 10 July 2017.

Nevertheless, it is worth noting a few of the rare examples of whistleblowing in the UAE, namely the fraudulent activities of a number of health insurance companies in Abu Dhabi and the sale of fraudulent degrees and other qualifications by the noted Pakistan-headquartered IT company Axact.

In 2010, 38 cases of fraudulent activities involving health insurance companies in Abu Dhabi were reported,²⁰ and several companies were heavily fined. The health insurance companies were involved in unethical practices such as charging for medical tests that had not been conducted as well as substituting non-prescription drugs for prescribed medications.

Apart from the fraudulent practices of health insurance companies, the IT company Axact was reported by one of its employees for making millions of dollars from selling fake degrees online.²¹ The employee, a Saudi-Arabian born Pakistani and fluent Arabic speaker, later fled with his family to the UAE for their safety after reportedly receiving threats).²² Although the IT company was headquartered in Pakistan, it was almost one hundred per cent owned by a Dubai registered company — illustrating the complexity can arise in companies operating across national boundaries. According to documents seen by reporters,

‘99.99 per cent of the company’s shares are registered under the Dubai company’s name, Axact FC LLC. The documents showed that the company has 600,000 shares. Only one share is under the name of Shoaib Shaikh, CEO and owner of Axact, another one share is under the name of his wife, Aisha, and the remaining 599,998 are registered under Axact.’

However, while UAE citizens were among those who fell victim to the scam, cases have been heard in relation to the matter in the US²³ and Pakistan, with matters appear as yet to be brought in the UAE (as far as the author can determine).

The author believes that the general level of reporting fails to reflect the real situation regarding illegal activities at corporate level due to a number of reasons. Firstly, a lack of knowledge of the interpretation of the term ‘confidentiality’ or ‘confidential’, almost universally present in the terms of an employee’s contract of employment, can impede disclosure. Confidentiality is emphasized when an employee signs a contract, with disclosure of company secrets or sometimes any information come across in the period of employment (including the terms of their own employment) strictly forbidden. Thus reporting any activities regarding the internal or external activities of the business means breaching the contract and indirectly breaching the law. This appears to entitle employers to supremacy in

²⁰ ‘38 Cases of Health Insurance Fraud, Forgery and Abuse Uncovered in Abu Dhabi’ *GulfNews*, 18 April 2010 <<http://gulfnews.com/news/uae/health/38-cases-of-health-insurance-fraud-forgery-and-abuse-uncovered-in-abu-dhabi-1.614170> accessed 8 July 2016.

²¹ Ashfaq Ahmad and Noor Nazzal, ‘Meet Whistleblower Who Busted Fake Degrees Scam’ *GulfNews*, 20 May 2015 <<http://gulfnews.com/news/uae/crime/meet-whistleblower-who-busted-fake-degrees-scam-1.1519158>> accessed 15 September 2016.

²² Although he was the initial informer, it was New York Times article that brought it great publicity in the west: <https://www.nytimes.com/2016/04/11/world/asia/pakistan-axact-degree-scam.html?mcubz=0>. See also <http://nation.com.pk/business/21-May-2015/whistleblower-in-axact-scandal-receiving-life-threats>. accessed 5 January 2017.

²³ <http://gulfnews.com/news/americas/usa/pakistani-man-pleads-guilty-in-140m-fake-degree-scam-in-us-1.2009629>.

such a situation and grant them the freedom to retaliate as they wish (for example, demotion, termination of employment, prosecution). In many cases, employees' hesitation to come forward and report wrongdoings is due to their view that such disclosure would fall within the definition of a revelation of company secrets and therefore breach of the law. Article 379 of the UAE Penal Code provides that, 'it is an offence for an individual, who is entrusted with secrets through his employment, subsequently to disclose those secrets'. Consequently, whistleblowing, according to employees' interpretation, can be considered as a criminal offence and the committer of the action may be liable for at least one year in jail and/or a fine not exceeding AED 20,000.

Second, the confusion caused by the term of 'defamation', which is indeed considered as a criminal offence under the UAE Penal Code, is also a source of hesitation regarding whistleblowing. Defamatory statements and publications tarnish a company's reputation and reduces the honor and respect due to the business; it can also have quite serious commercial impacts. Therefore, defamation, if proven, attracts severe penalties. A whistle-blower may fear falling within the ambit of this law and bearing such consequences. Lack of knowledge on the part of potential whistleblowers might convince them to 'err on the side of caution' and remain silent for fear of breaching the defamation provisions. However, if a whistleblower's release of information is permitted or indeed required by law, liabilities will vary. If the disclosure deviates from what is requisite, the company can sue the whistleblower and file a civil and/or criminal suit against him/her for damages.

To sum up, any individual who contemplates reporting wrongdoings in such an environment will almost certainly not take action. Potential or actual employer intimidation and the fear of being charged with a criminal offence and severe penalties due to the disclosure of secrets (and a desire for self-preservation) would deter the whistleblower from reporting.

Nevertheless, times have changed and the UAE enjoys economic growth and increasing international corporate participation in its economy. According to the Brookings Global Metro Monitor survey²⁴ (ranking 'the economic performance of the world's largest metropolitan economies based on growth in GDP per capita and employment rates'), Dubai was ranked the fifth-highest performing metropolitan economy of 2015 from amongst 300 cities. During the period, the emirate enjoyed a boost of 4.5 per cent in per capita GDP and 6.5 per cent in employment. With the entrance of diverse and international businesses into the market, the UAE turned its attention to increasing security and fighting corruption through the introduction of the new Financial Crime Law, the main aim of which is the establishment of the Dubai Centre of Economic Security.

The Centre has been created (on paper at least) under the legislation and is to combat financial crimes including 'corruption, fraud, bribery, embezzlement, destruction of public property, forgery, counterfeiting, money laundering, terrorism or illegal organizations financing or other crimes that may be committed in the entities' within the Emirate of Dubai. Hence, the law opens the door for protection of whistleblowers under its intention to halt corruption. In Article 19, the Financial Crime Law provides 'protection of reporter'. The law states that the reporter's freedom and security will be guaranteed and *no* legal action will be taken against the whistleblower unless the information provided is proven to be false. The

²⁴ BROOKINGS, (2015), 'Report: Global Metro Monitor' p. 25, available: https://www.brookings.edu/wp-content/uploads/2015/01/bmpp_gmm_final.pdf.

center has not yet been established, however, thus the credibility of the claim remains in doubt or at least untested at this time (late 2017). In addition, other concerns accompany the law such as whether the regulation only applies to the emirate of Dubai or whether it includes the six other emirates. The UAE, rather like Australia, faces the challenge of a ‘federation’ with laws able to be enacted in any or all of the emirates individually. Similarly, national legislation is also able to be passed.

Various advanced countries such as the United States (US) and the United Kingdom (UK) have already implemented whistleblowing protection laws to secure whistleblowers from harsh employer retaliation. For instance, in the UK, under the *Public Interest Disclosure Act 1998*, ‘employees who make a disclosure about unlawful activity are protected from prosecution and from termination of their employment by reason of that ‘disclosure’’.²⁵ In the US, whistleblowers were afforded protection as far back as 1863, under the *False Claims Act* (FCA).²⁶ In 1978 and 1989, the US passed the *Civil Service Reform Act*²⁷ and *Whistleblower Protection Act* respectively,²⁸ which provided further protection for the whistleblowers and encouraged them to step forward and report fraudulent activities in their employers’ operations, without having apprehensions about losing their jobs or facing other repercussions from their employers. It is therefore becoming increasingly evident that the lack of protection for whistleblowers in the UAE is a significant problem when we compare the policies in place there to those adopted by a number of the other countries.

However, due to increasing international pressure on the UAE, as well as local and international criticism for the lack of protection for whistleblowers, a new law was proposed early in 2016 with regard to whistleblowers. According to the new Financial Crime Law²⁹, the whistleblower will be protected and unless their claims are proven to be false. In the latter instance the entity accused of wrongdoing would then be allowed to take legal action. The proposed law is a welcome development, but (once promulgated) the biggest challenge is its implementation. Although the law has been passed, the Centre is not yet in place nor any part of the whistleblower protection legislation tested before the courts.

Implementation will be complicated because not only will the whistleblowers have to be protected legally, but the authorities will also need to ensure their safety from personal threats from employers and also from employees who will be directly impacted by the disclosure of unethical activities. The importance of providing protection to whistleblowers, as well as rewarding them as has been recognized in developed countries like the US (where in 2010 USD 452 million was set aside by the US Securities and Exchange Commission to for that purpose) and the UK and shows the significance of whistleblowing in the business world where it is now widely understood that whistleblowers supply much of the information

²⁵ *Public Interest Disclosure Act 1998* (UK) Ford, Rebecca and Nicholas Braganza, ‘New Protection for Whistleblowers in Dubai’ Clyde & Co Insight and Knowledge, 10 July 2016.

²⁶ *False Claims Act* 31 USC §§ 3729–3733. (U.S).

²⁷ *Civil Service Reform Act* of 1978, 5 USC § 1701 et seq.

²⁸ *Whistleblower Protection Act* of 1989, USC § 2087.

²⁹ Rebecca Ford, ‘New Law Provides Protection for Whistleblowers in Dubai’ *People Management Magazine*, 15 October 2016 <<http://www.cipd.ae/people-management-magazine/hr-news-opinion/whistleblower-protection-dubai>> accessed 1 December Month 2016.

required to detect and stem fraud. This reinforces the idea that the UAE needs to implement whistleblowing protection policies and to encourage whistleblowers to report fraudulent and unethical activities. While it is understandable that the UAE has lagged behind Western countries in providing protection to whistleblowers, since business has flourished in the UAE only in the last two decades, it is imperative that it join the international business and governments' push in this direction for its own sake and those of UAE businesses and stockholders.

On a positive note, some governmental institutions and firms have already pre-emptively incorporated whistleblowing policies in their codes of conduct. For instance, in February 2015, the Department of Municipal Affairs of Abu Dhabi established a whistleblowing policy. The purpose of the policy states:

this Policy is to provide the Municipality's employees at all administrative levels as well as its clients a mean of reporting the violations, while being assured that their disclosures will be fairly treated in strict confidentiality to ensure that they will be protected against any potential revenge due to reporting such violation.³⁰

The UAE now comprises one of the largest business centers in the world and one in which most of the world's major multinational corporations operate, and it is now more important than ever that the UAE provides protection to its employees and encourage them to act as whistleblowers. The *Financial Crime Law* which was proposed in 2016 is a step in the right direction, but now the main objective should be its successful implementation, which will require a series of appropriate implementing regulations to put it into effect.

A recent example of successful implementation of legislation in the UAE that has involved increasing compliance in the corporate sector is the new *Commercial Companies Law* No. 2 of 2015 which was implemented by the UAE government in July 2015 and could act as a model for the implementation of whistleblower protection legislation. Companies operating in the UAE were given one year to comply with the new policies and companies that failed to comply were dissolved immediately. The *Financial Crime Law* regarding whistleblowing needs to follow a similar framework. Companies should be given a time period, preferably one year, to comply with the new whistleblowing protection laws and put them into practice. Failure to do so should result in repercussions for the companies, such as a heavy fine or temporary suspension, which will force the companies to comply with the whistleblowing policies. While this may seem more a 'stick' than a 'carrot and stick' approach, it has been demonstrated to work successfully in the UAE environment.

4. IMPLEMENTATIONS AND RECOMMENDATIONS

The UAE's proposed legal framework is a comprehensive solution that draws on the failures and successes of other nations in passing and implementing their regulatory frameworks. The framework must not be vague in its coverage and application. It should include not just public institutions, entities and organizations, including military and intelligence organizations, but also private businesses (small, medium and large) and corporations

³⁰ Abu Dhabi City Municipality, 'Whistleblowing Policy, Department of Municipal Affairs' (2015) 4.

operating in or headquartered in the UAE, as well as government contractors among others. The scope is important to allow for maximum protection against damage caused by the actions of people within these organizations.

This legal framework must extend not just to permanent employees but to temporary contractual employees (both citizen and non-citizen), and should cover all kinds of stakeholders and public citizens who may interact with the organizations and observe their behavior. This will also allow the framework to protect people who expose not just obvious criminal acts, but more generally acts that may have grave public consequences, including threats to the country's resources, national security, environmental matters, even if such acts were not expressly yet designated as criminal acts.

The appeals process should be effective and clear of bias. Independence is crucial in the judiciary in this respect. They must be able to render justice 'without fear or favor', having no obligation to the executive or legislative house/rulers. Rather their role is to interpret and enforce the law. Bias at any level is dangerous, but at higher authorities could damage the efficacy of lower bodies and render their work completely fruitless. In addition, there should be a constant review mechanism of the system to ensure that the whistleblower protection system is achieving its goals in the most effective and efficient manner, namely whether whistleblowers adequately protected (including within the employing entity and physically from threats or harm from employer or fellow employees if their identity is revealed in court), and whether they are coming forward and disclosing information that results in successful prosecution of wrongdoers (that is, preempting detection by inspectorates etc or prompting such action)

The framework must require companies and other organizations to inform their employees and other stakeholders of their rights under the whistleblowing protection laws and regulations and stand ready to clarify any unclear points, and assert to potential whistleblowers the scope of the protection they have. These organizations' ethical codes are required to include clauses that encourage potential whistleblowers to carry out their responsibility to the public to reveal crucial information (revelations in the public interest as a duty and responsibility). Appropriate fines must be mandated so that companies that violate their entrusted responsibilities as laid down by the legal and ethical framework are appropriately punished and right action encouraged in other entities.

Finally, the protection given to the whistleblowers should include protection from all manner of retaliatory actions. This may include bullying because this has been well documented to generate negative effects to the same extent as more direct retaliation against whistleblowers. Reparations for damages resulting from such retaliation should also be commensurate with any damage caused.

5. CONCLUSION

Businesses are established with the main purpose of creating wealth and maximizing stockholder profit. This, however, is not the sole reason that businesses exist. Limits are imposed by law and culture on the acceptability of various aspects of their operations (for example, labor or employment law, including working conditions; consumer law; fraud, bribery legislation and so on). Prevailing business ethics must adhere to so as to ensure that corporates operate within the regulations of the countries in which they operate. These

informal or culturally embedded ethics may often be reinforced by the law of the land. It is worth noting that operating across a number of countries brings with it the need for increased sensitivity to cultural differences while ensuring the adoption of basic common commercial ethical practices that are becoming international norms.

There is a need to have laws that protect the interests of business stakeholders, shareholders in the case of public companies as well as customers and suppliers, and also employees where they may find themselves in the position of wishing to report unethical undertakings by other employees or members of their organization or by their employer as a corporate entity. Legislation (together with required implementing regulations) must be put in place, especially in the UAE where protection is currently severely limited, to encourage employees to speak out against wrongdoing without encountering legal barriers to lodging notification of suspected or actual wrongdoing (together with evidence if possible) or facing harsh legal sanctions for doing so as well as the risk of potential lethal consequences from disgruntled fellow employees or the employer itself.

New provisions are required as Dubai is quickly establishing itself as an economic giant in the region, and a preferred business hub for people across the globe. As Dubai takes the lead in the role of a global business center, there should be laws that encourage ethical behavior within and by companies, including encouraging employees to speak up in the face of employee and corporate wrongdoing and taking action where companies attempt to suppress the ability of employees to report wrongdoing. Without persons who have the courage to speak up in the face of evil, there is a high likelihood that a lot of wrongs will be 'swept under the carpet' and illegal (and/or unethical) business practices continue and be encouraged by lack of whistleblower activities and adequate consequent prosecution of wrongdoers.

Corporate and other entities as yet unconvinced of the advantages whistleblower activities offer them, the broader business community, stockholders and the broader community in the longer term (for example, in improved corporate governance, increased transparency, greater reputation as an advanced) should be targeted in an education campaign to encourage compliance. Nor should unprincipled businesses be allowed to continue to intimidate their employees and trample not only employee rights but ultimately the public good.

By the government establishing strong laws to protect whistleblowers, both governments and organizations can encourage the process of uncovering unaddressed wrongdoing. Consequently, this increases accountability and strengthens the fight against corruption and mismanagement, increasing the reputation of the UAE as an environment that encourages ethical corporate behavior. Laws protecting whistleblowers are, therefore, a necessity, just as is making a profit for businesses.

The act of whistleblowing and its related moral and ethical questions are a highly subjective matter. Nonetheless, it can be argued that from a basic point of view that as illegal activities are unethical, disclosing information about such activities has to be ethical. However, a lack of clarity on how to define a wrongdoing, how to disclose it and who has to suffer from the revelation makes whistleblowing a difficult matter with regard to ethical and moral considerations for the whistleblower (in addition to the risk of unpleasant personal consequences for themselves).

A lack of clarity regarding legal aspects is discouraging to individuals, thus protection of whistleblowers by appropriate legislation is essential to encourage them to take action. The lack of such a protection in the UAE and the low number of reported cases in the Gulf region supports this argument and should help validate the nation's implementation of legislation addressing the issue.

The focus of the research was to analyze the significance of whistleblowing in the UAE and whether any policies have been implemented to provide protection the whistleblowers. Not only is there a lack of protection for whistleblowers in the UAE but, in some cases, whistleblowing is considered to be a criminal offence.

In 2016, a new *Financial Crime Law* was proposed to provide protection to whistleblowers. The challenge for the UAE now is to implement this law successfully. In order to do so, it will have to take some measures to ensure that companies that fail to comply with the legislation will face serious repercussions. The implementation of the legislation, its implementing regulations, and subsequent testing before the courts (should reports be made to the new body as anticipated in the legislation) is eagerly awaited as is discovering whether the new legislation results in higher reporting and prosecution rates for offenders. The country is poised on the doorstep of a new era for whistleblowers, and thus for business and the public good.

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