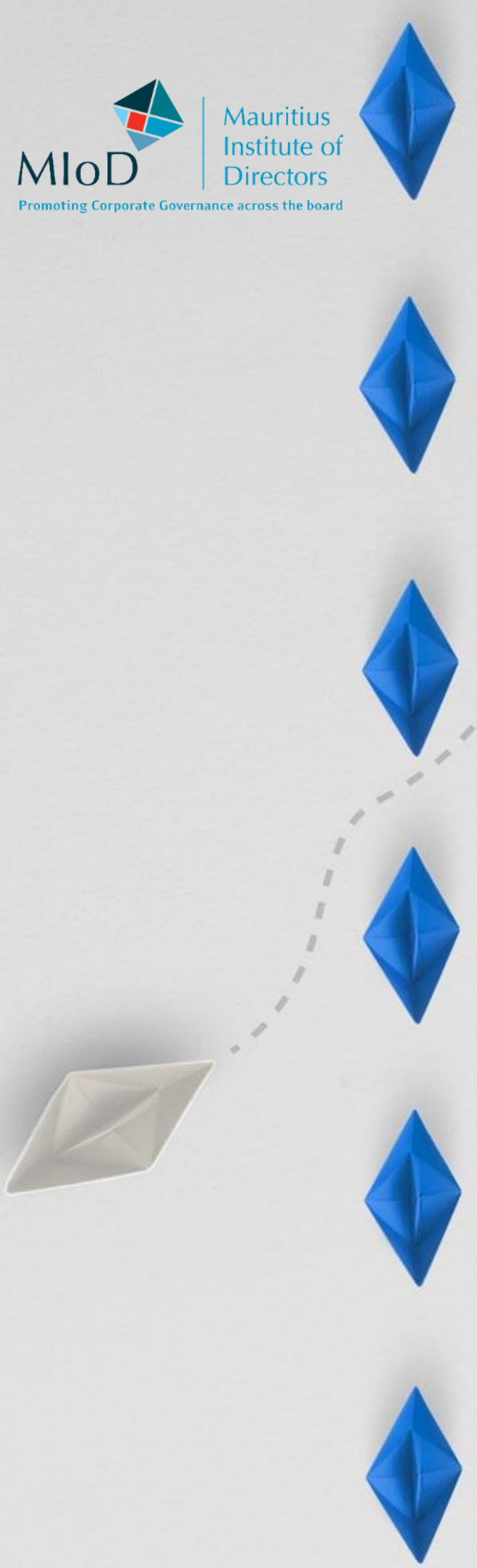
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MIoD Mauritius Institute of Directors
Promoting Corporate Governance across the board

Audit Committee Forum

Position Paper 6

Audit Committee Guidelines for evaluating a whistleblowing system

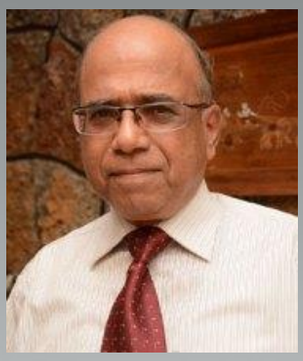


September 2018

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Tribute to a great man

Anil Gujadhur



We are profoundly saddened by the death of **Anil Gujadhur**, Audit Committee Forum (ACF) Chairperson since 2016, who passed away on 28 June 2018. Anil leaves a big void behind. He left us so suddenly, without warning, and will deprive us of his sharp mind and kind soul.

Today we not only mourn the departure of a great man but also want to honour his invaluable contribution to the ACF. Anil had a positive impact during discussions right from the start of the ACF in 2013. He was a highly engaged member, always ready to provide advice and perspective on all issues.

During his mandate as ACF Chairperson, he has been instrumental in shaping the last three ACF Position Papers, including this one.

Thank you **Anil** for your devotion and support to the ACF throughout these past five years. May your legacy continue to inspire us to greater things.

Audit Committee Forum Members

About the Audit Committee Forum

Recognising the importance of Audit Committees as part of good Corporate Governance, the Mauritius Institute of Directors (MIoD) and KPMG have set up the Audit Committee Forum (ACF or the Forum) in order to help Audit Committees in Mauritius, in both the public and the private sectors, improve their effectiveness.

The purpose of the Forum is to help Audit Committee members adapt to their changing role. Historically, Audit Committees have largely been left on their own to keep pace with rapidly changing information related to governance, risk management, audit issues, accounting, financial reporting, current issues, future changes and international developments.

The Forum provides guidance for Audit Committees based on the latest legislative and regulatory requirements. It also highlights best practice guidance to enable Audit Committee members to carry out their responsibilities effectively. To this end, it provides a valuable source of information to Audit Committee members and acts as a resource to which they can turn for information or to share knowledge.

The Forum's primary objective is thus to communicate with Audit Committee members and enhance their awareness and ability to implement effective Audit Committee processes.

Position Paper series

The Position Papers, produced periodically by the Forum, aim to provide Board directors and specifically Audit Committee members with basic best practice guidance notes to assist in the running of an effective Audit Committee.

Position Paper 6 deals with the Audit Committee's guidelines for the evaluation of whistleblowing systems.

Previous Position Papers are listed at the bottom of this page* and may be downloaded at http://www.kpmg.com/mu and http://www.miod.mu/

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***Previous Position Papers**

Position Paper 1: Best Practice Guidance Notes for Audit Committees (July 2014)

Position Paper 2: Interaction of Audit Committee with Internal and External Auditors (May 2015)

Position Paper 3: The Audit Committee's Role in Control and Management of Risk (December 2015)

Position Paper 4: Guidelines for the Audit Committee's assessment and response to the Risk of Fraud (October 2016)

Position Paper 5: Guidelines for the Audit Committee's approach to Information Technology Risk (July 2017)



Contents

	page
01 Introduction	6
02 Establishing a whistleblowing system	8
03 The role of the Audit Committee	10
04 Evaluating the effectiveness of the whistleblowing system	12
05 Conclusion	14
Appendices	
A: Example of a whistleblowing policy	16
B: Example of a Tracking Report	18

Introduction

As per the National Code of Corporate Governance for Mauritius (2016), "All Boards are encouraged to put whistleblowing procedures in place and to describe these in their Code of Ethics." Position Paper 6 has been prepared to assist the evaluation of an organisation's whistleblowing procedures by providing background information on whistle-blowing, how to establish a whistleblowing system and to assess its design effectiveness and to define the role of the Audit Committee. Each organisation is unique and the Audit Committee will need to apply whistleblowing procedures in a manner that is appropriate.

Whistleblowing is a key defence against management override of internal controls and forms part of an organisation's fraud prevention and detection strategy. It is a process for anonymous reporting outside the normal Management channels, of illegal, unethical and fraudulent behaviours, as well as any form of misconduct or other suspected wrongdoing within the organisation. Whistleblowing can be encouraged through the creation of these channels through which employees, suppliers or contractors, can safely and confidentially report their concern(s) without any fear of retaliation. Public disclosure is also perceived by some as a form of whistleblowing.

While the ultimate responsibility rests with the Board as a whole, the Audit Committee is typically tasked with the principal oversight of fraud, misappropriation and whistleblowing systems, with the direct responsibility for anti-fraud efforts generally residing with Management including internal audit.

The Audit Committee plays a vital role in evaluating an organisation's culture to which employees will contribute positively if they are confident that it is fair, transparent and ethical and if there is evidence that this culture is initiated by the tone set at the top. Whistleblowing is closely knitted to the organisation's culture. Effective internal whistleblowing systems contribute to a sound corporate culture but can only take place in an environment that encourages concerns to be raised without fear of retaliation. A very useful method of explicitly ensuring and establishing the conducive culture of an organisation is through sound and effective whistleblowing policies and systems.

Internal whistleblowing can be done via internal processes set up by the organisation; external whistleblowing can be done by reporting the suspected wrongdoing to an external body. Possible external agencies to which external whistleblowing reports can be made are Transparency Mauritius (affiliated to Transparency International), Clear Connect, amongst others.

An organisation should clearly define what constitutes a genuine reportable whistleblower concern. For example, this can be as follows:

— anything which amounts to a breach of rules, being reported in good faith;

— a breach of the organisation's policies and procedures; and

— behaviour/action that harms or is likely to harm the good standing, reputation and financial well-being of the organisation.



Establishing a whistleblowing system



As a first step to establishing a whistleblowing system, every organization is strongly encouraged to document a whistleblowing policy and communicate it internally. The policy should make it both safe and acceptable for employees/third parties to raise concerns about possible improprieties in matters of financial reporting and other malpractices at the earliest opportunity. An example of a whistleblowing policy is in **Appendix A (page 16)**.

Although the whistleblowing system may take various forms in an organisation, but typically incorporates a telephone hotline. Management is responsible to establish and actively promote the existence/availability of the whistleblowing system to employees, suppliers and customers, whichever be the choice of channels of communication. An internal communication point is not recommended to be used to phone up the whistleblowing hotline within the organisation, as the sources of calls made can be easily traced and could compromise the independence and objectivity of the system. Care should be taken by the organisation to remove factors acting as barriers to the whistleblowing system.

Barriers

Barriers to an effective whistleblowing procedure include:

— *Operational*

  Is the whistleblowing process fully embedded within the organisation? Do all staff know what to do and what to look for? Do the hotlines and reporting lines actually work?

— *Emotional and cultural*

  Whistleblowers are commonly viewed as snitches, sneaks, grasses, super grasses and gossips. This perception can make it difficult to blow the whistle even though individuals recognise that it is in the interest of the organisation, employees, shareholders and other stakeholders to do so. It needs to be dispelled.

— *Fear*

  Potential whistleblowers often fear reporting incidents to Management. Areas such as legal protection, fear of trouble and potential dismissal all play a part when an individual is considering whistleblowing. Assurances should be given to dispel such fear.



An effective whistleblowing system

The most important characteristic of an effective whistleblowing system is confidentiality and source protection. Whistleblowers should be assured and feel confident that they will not suffer any retaliation or personal harm from any person within the organisation or outside, for having reported, in good faith, cases of suspected malpractice. However, any malicious or wilful false allegation, for deliberately venting out personal grievances or intending harm towards the organisation, will result in disciplinary actions.

Both the whistleblowing system and the corporate culture will be negatively affected if investigations are not performed and reported by an independent person, with required skills and experience. Complaints should be dealt with swiftly and the results publicised to build confidence and increase the effectiveness of the whistleblowing system.

Sensitive matters, such as borderline issues likely to unfairly harm the organisation's good public standing, if prematurely discussed in public until established by reference to actual facts, should however be handled discreetly but effectively, to ensure that the reporting process builds up and retains credibility.

Whistleblowing mechanisms

The whistleblowing mechanism should allow for any whistleblower to remain anonymous, should he/she wish to do so. This could be ensured by providing the following mechanisms:

— Free-post address to allow whistleblowers to make written complaints and/or draw attention to improper conduct of business by the organisation or any person associated with it;

— Toll-free telephone number whereby whistleblowers may call to report any concern;

— Toll-free fax number whereby whistleblowers may fax reporting;

— Secure email address whereby whistleblowers can email reporting;

— Secure a web-based tool for purposes of reporting.

The role of the Audit Committee

Internationally, the Sarbanes-Oxley Act in the United States and the Companies Act in the United Kingdom require the Audit Committee to set out policies and lay down procedures for receiving these whistleblowing communications and ensuring that Management take the appropriate action to put in place an effective internal mechanism to facilitate them.

The Audit Committee has a duty to help in this build-up of internal reporting of suspected malpractices. For example, it can ensure that there is a need for constant promotion and marketing of the whistleblowing system (through screen savers, posters in the pause area, raising employee awareness in the course of training programs, etc..), as this helps to boost up employees' confidence in the system.

National Code of Corporate Governance for Mauritius (2016)

More specifically, section 8.4 of the guidelines from the National Code of Corporate Governance for Mauritius (2016) states that the Audit Committee shall:

- Review the adequacy and security of the organisation's arrangements for its employees and contractors to raise concerns, in confidence, about possible wrongdoings in financial reporting or other matters. The Audit Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow up action;
- Review the organisation's procedures for detecting fraud;
- Review the organisation's systems and controls for the prevention of bribery and to receive reports on non-compliance;
- Review regular reports from the Compliance Officer and keep under review the adequacy and effectiveness of the organisation's compliance function;
- Review significant transactions not directly related to the organisation's normal business as the Audit Committee might deem appropriate; and
- Review significant cases of employee conflicts of interest, misconduct or fraud, or any other unethical activity by employees or the organisation.

Independent supervisory body

Many entities have moved away from setting up specific committees for evaluating reports of suspected malpractices to the whistleblowing system, for ensuring better effectiveness of the whistleblowing process. They have instead placed this responsibility on a trusted independently-constituted supervisory body within the organisation. The Audit Committee should satisfy itself that this supervisory body is actually independent, vested with the appropriate authority, and has direct and unrestricted access to the Chairperson of the Audit Committee.

The supervisory body is responsible for evaluating all complaints and reports regularly and timeously to the Chairperson of the Audit Committee on the following:

- Significant complaints or no complaints received, if such is the case;
- The number and nature of reports received by the whistleblowing system during the reporting period;
- Whether they are concentrated in particular sections of the organisation;
- The seriousness and possible impact on the organisation of the complaints received;
- The estimated or actual monetary value involved on the basis of the complaints received;
- How the complaints were dealt with, i.e. the investigative process and the outcomes.

Clearly, the Audit Committee has a key role to ensure the continued functioning of a well-oiled whistleblowing system in the organisation. It can fulfil this role by ensuring, amongst others, that there are well laid-down whistleblowing rules and procedures. Moreover, possible protections of informers could include confidential hotlines, access to a confidential and independent person or office, safe harbours and rewards, or immunity to the whistleblowers.



Evaluating the effectiveness of the whistleblowing system

In assessing the effectiveness of the whistleblowing system, an Audit Committee should consider and satisfy itself with regard to the following questions:

- Are whistleblowing policies documented and are they communicated throughout the organisation, as well as to suppliers and customers?
- Does the policy make it clear that it is both safe and acceptable for employees, suppliers and customers to raise concerns about perceived wrongdoing?
- Were whistleblowing policies arrived at through a consultative process? Do employees, suppliers and customers buy into the process?
- Are concerns that have been raised from time to time by employees, suppliers or customers responded to within a reasonable timeframe?
- Are policies in place to ensure that all reasonable steps are taken to prevent the victimisation of genuine whistleblowers?
- Does the whistleblowing system have a dedicated hotline number, fax number, website, e-mail address, and regular mail or post office box address to expedite reports of suspected incidents of misconduct, and are these details well-publicised?
- Does the whistleblowing system demonstrate confidentiality, including showing how caller ID, e-mail tracking, and other technologies cannot be used to identify the whistleblower?
- Has the organisation considered the use of a trusted independent whistleblowing operator or a trusted ombudsman to enhance the perception of confidentiality regarding the whistleblowing process?
- Does the whistleblowing system utilise trained interviewers to handle calls to the hotline rather than a voice mail system?
- Is the whistleblowing system available for 24 hours a day, 365 days a year?
- Does it have multilingual capability to support hotline callers with different linguistic backgrounds or those who are calling from different countries?



- Are callers provided with a unique identification number to enable them to call back later anonymously to receive feedback or follow-up questions from investigators?
- Does the organisation have a case management system to log all calls and their follow-up, to facilitate management of the resolution process, testing by internal auditors and/or forensic investigators and oversight by the Audit Committee? For an example of a tracking report that the Audit Committee may use for this purpose, refer to **Appendix B (page 18)**.
- Has the organisation established protocols for the timely distribution of each type of complaint, regardless of the mechanism used to report the complaint, to appropriate individuals within the organisation and to the Audit Committee and Board of Directors where appropriate? Does the Audit Committee receive statistics from the whistleblowing system to determine and evaluate its use and effectiveness?
- Are complaints of any kind involving Senior Management automatically submitted directly to the Audit Committee without filtering by Management or other entity personnel?
- Does the organisation effectively distribute comprehensive educational materials and training programs to raise awareness of the whistleblowing system among potential users? Are these materials available in all relevant languages, given the potential user base, and do they take into consideration cultural differences that may require alternative approaches to achieve the desired goal?
- Are success stories duly publicised to instil confidence among existing and potential whistleblowers?

Conclusion

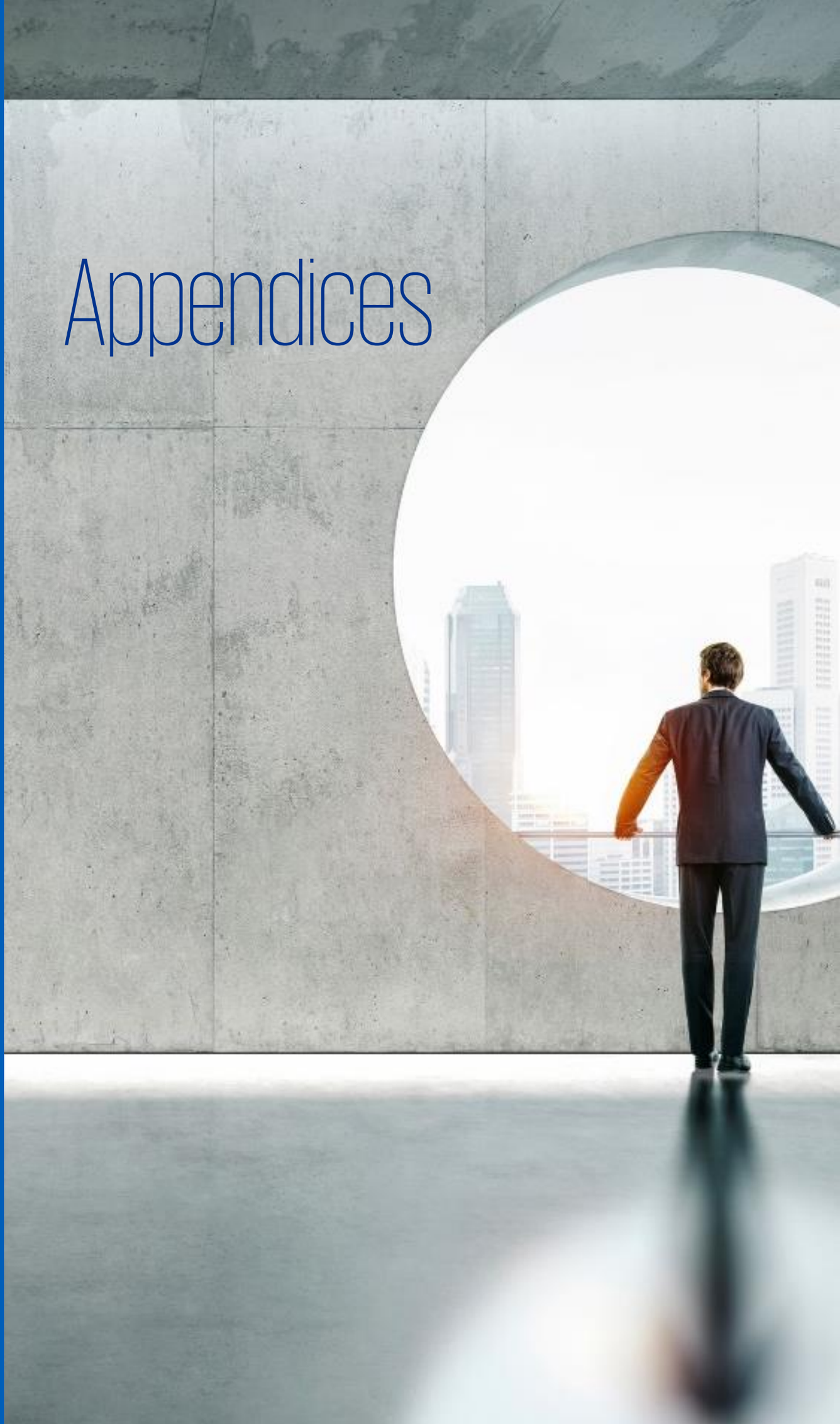
All organisations are exposed to abuse by insiders and outsiders. Abuses usually start on a small scale. In other cases, the abuses have assumed such significant and extensive size that they ended up seriously harming the organisation as well as bringing down the reputation of its major stakeholders and sometimes that of the entire jurisdiction.

The abuses cannot take place without internal collaboration. It is the reason why an organisation should put in place an independent and trusted in-house system of whistleblowing to detect cases of malpractice and/or misfeasance involving the organisation, dealing with such confidential reports received before it is too late. The Audit Committee has a key role to safeguard the organisation against such abuses by ensuring that appropriate pre-emptive actions are taken. This Position Paper provides an outline of the tools which need to be in place in the organisation's environment to protect against those abuses.

An effective whistleblowing system can be put in place by developing enduring, competent and fully trusted in-house whistleblowing processes, immune from interference by internal and external interested parties. Here again, the Audit Committee has an important role to play by ensuring that the whistleblowing system is free from undue interference and is able to deliver timely and effective remedies in order to ward off dangers, rather than dealing with matters when the harm has travelled too far.

The prevalence of whistleblowing will grow and yield positive results to local organisations only where whistleblowers are guaranteed protection against disclosures. The Audit Committee and the organisation will need to stand together to give this guarantee for the whistleblowing system to work out effectively.

Appendices



Appendix A

Example of a whistleblowing policy

All employees are encouraged to raise genuine concerns about possible improprieties in matters of financial reporting and other malpractices at the earliest opportunity, and in an appropriate way.

This policy is designed to:

— support our values;

— ensure employees can raise concerns without fear of suffering retribution; and

— provide a transparent and confidential process for dealing with concerns.

This policy not only covers possible improprieties in matters of financial reporting, but also:

— fraud;

— corruption, bribery or blackmail;

— criminal offences;

— failure to comply with a legal or regulatory obligation;

— miscarriage of justice;

— endangering the health and safety of an individual; and

— risk of getting involved into any or all of the above.

Principles

— All concerns raised will be treated fairly and properly.

— The harassment or victimisation of anyone raising a genuine concern will not be tolerated.

— Any individual making a disclosure will retain his/her anonymity unless he/she decides otherwise.

— The organisation will ensure that any individual raising a concern is aware of who is handling the matter.

— The organisation will ensure no one will be at risk of suffering some form of retribution as a result of raising a concern even if they are mistaken. This assurance is however not extended to someone who maliciously raises a matter he/she knows to be untrue.

Grievance procedure

If any employee believes reasonably and in good faith that malpractice exists in the work place, then he or she should report this immediately to their own Line Manager. However, if for any reason they are reluctant to do so, then they should report their concerns to either the:

— Company Secretary; or

— Officer in charge of human resources.

Employees concerned about speaking to another member of staff can speak, in confidence, to an independent third party by calling the whistleblowing hotline on [ ] or sending an email at [ ]. Your concerns will be reported to the organisation without revealing your identity.

If these channels have been followed and employees still have concerns, or if employees feel the matter is so serious that it cannot be discussed with any of the above, they should contact the Audit Committee [ ].

Employees who have raised concerns internally, will be informed of who is handling the matter, how they can make contact with them and if there is any further assistance required. As much feedback as possible will be given without any infringement on a duty of confidence owed to someone else.

Employees' identities will not be disclosed without prior consent. Where concerns are unable to be resolved without revealing the identity of the employee raising the concern, (e.g., if their evidence is required in court), a dialogue will be entered into with the employee concerned as to whether and how to proceed.

The above policy serves only as an example. Each organisation can include relevant reporting lines in their whistleblowing policy.



Appendix B

Example of a Tracking Report

Below is an example of a Tracking Report that may be used by the Audit Committee to record and follow up on communications received as part of the whistleblowing policy and procedures. This example is for illustrative purposes only, and the Audit Committee is advised to tailor the report based on the organisation's specific needs.

Date Submitted	Tracking Number or Case Number	Description of complaint	Submitted by (optional)	Value of incidence	Current status	Actions taken	
						Date	Comment


“ Our lives begin to end the day we become silent about things that matter ”
Luther King , Jr.

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