

India Audit Committee Chairs Network (IACCN)

Meeting on Role of the Audit Committees in their oversight of Whistleblower (WB) complaints, including anonymous complaints

EY hosted the India Audit Committee Chairs Network (IACCN) meeting on 23 June 2022. The event included a panel discussion on the role of Audit Committee in their oversight of whistleblower complaints, best practices to deal with anonymous complaints, criteria for pursuing a whistleblower complaint (WBC), timeline for disclosing the WBC to external auditor, regulator, stock exchange etc. The panel comprised:

- ▶ Geeta Mathur
Audit Committee Chair - IIFL Wealth Management, Info Edge, NIIT
- ▶ Rajani Kesari
CFO, Ambuja Cements and CFO India for Holcim Group
- ▶ Inderpreet Sawhney
Group General Counsel and Chief Compliance Officer, Infosys
- ▶ Sandeep Baldava
Partner and Leader (West), Forensic & Integrity Services, EY India

The discussion was moderated by Arun Duggal, Chairman, ICRA., Audit Committee Chairman of ITC Ltd and Independent Director of Jubilant Pharma.

Arun Duggal started the session by outlining the importance of the whistleblower mechanism and its use. He also classified WB into four categories -

1. Conscientious objector - Reports wrongdoing as a matter of principal such as fraud, siphoning of funds and payment of bribes, and is very courageous to take on powerful forces alone.
2. Jealousy, enmity with a colleague - Does not want the target to personally gain from different sources, such as taking kickbacks and minor frauds.
3. HR type issues - Reports salary or performance issues.
4. Spite - Files false complaint to hurt someone.

The challenge for the Audit Committee (AC) is to make sure that only genuine WB complaints are addressed, and to make sure that no WBC is overlooked.

Panel Discussion

- ▶ Should anonymous Whistleblower Complaints (WBC) be entertained? Most WBCs are anonymous as complainants are afraid of retributions.

There are many instances of retaliation against the WB and anonymity helps the WB in such cases to come forward and report the wrongdoings. WBC although anonymous should not be ignored and should be taken seriously based on the evidence shared. Following are the steps that should be followed when an anonymous complaint is received:

Step 1: As part of the policy, a company should encourage anonymous WB but it should be backed by credible information to enable detailed investigation.

Step 2: Confirm the validity of the complaint before taking any action by doing smell test/preliminary investigation by persons who are independent and have no conflict of interest.

Step 3: If smell test/preliminary investigation supports the WB claims, then a detailed investigation can be undertaken.

Step 4: Document the entire process of how the WBC was settled/disposed and what actions were taken.

By following the above steps, the board/AC demonstrates the commitment to addressing the WBC and signalling to the employees that their concerns will be taken seriously.

- ▶ Should you be worried if, as Audit Committee (AC) Chair, you see that there are negligible WBCs and Internal Audit Reports do not raise any serious issues? How should you promote a culture where employees feel comfortable raising WBC on wrong doings?

Negligible WBC can be because of any of these three reasons:

- I. The company has good controls
- II. WB mechanism is non-existent in the company
- III. WB mechanism exists but it is not effective or people do not have confidence in it

To promote individuals to come forward and report wrongdoing the tone at the top is very important. The top management should maintain open communication and a sound WB policy which allows anonymous complaints. They should oversee the development of a communication program through mailers, posters, trainings etc. and also communicate the summary of the WB mechanism (number of complaints received during the quarter, actions taken) during townhalls to update people and encourage them to come forward. The management of the company should “walk the talk” – that is, their behaviour and day-to-day actions have to match the aspirations they have for their colleagues and organization. Such actions will boost the confidence of the employees and they will have faith in the WB mechanism to come forward and report the wrongdoings.

- ▶ What is the process to be followed if a WBC is received against KMP or board member?

When a WBC is received against a KMP or board member, a disclosure should be made to the AC about WBC. If there are enough evidences supporting the WBC, the matter should be investigated and the person against whom the allegation has been made should be recused so that there is no conflict of interest. Further, the team that is investigating the complaint should be independent and not be influenced by the person recused. If the nature of the complaint is serious, a third-party expert or forensic consultant can also be onboarded. The external auditor should be informed if the allegation is financial in nature. Once the report/investigation is complete, it should be presented to the AC and a regulatory disclosure informing the media (if required) should be made.

- ▶ When should the complaint be disclosed to External Auditors, regulators, stock exchange?

For regulator/stock exchange:

There are certain industries which are well regulated, and the regulator has defined the process of reporting certain type of complaints within specified timelines (e.g., Banking and Financial industry)

SEBI has defined timelines under Listing Obligations and Disclosure Requirements (LODR) for certain types of complaints.

In cases where there is no regulatory requirement, undertake smell test/preliminary investigation and dynamically decide at what stage it should be reported to the regulator.

For External Auditors:

If there is any impact on the financials or against any senior personnel, it should be disclosed to the external auditor, as and when the AC is informed as they are a key stakeholder in this process. Companies (Auditor's Report) Order, 2020 (Caro 2020), has made it mandatory for companies to disclose all whistleblower complaints to the external auditor.

- ▶ What should be the role of CFO/ General Counsel (GC) in the WBC process?

Role of GC is to become an advisor in the whole process. While the overall responsibility of the investigation, to bring it to closure rests with the AC, the AC will need assistance in the process. The assistance can be in the form of advice in the area of who should carry out the investigation, if external forensic expert should be hired, who needs to be aware of the investigation etc.

- ▶ What should be the criteria for pursuing a WBC? What should be the constitution of the Internal Investigation Committee looking into a WBC?

WB mechanism should not be restricted to employees only, but other stakeholders like customers and vendors should also be allowed to raise a complaint for any wrongdoing. For pursuing any WBC there should be some merit in the complaint and supporting circumstances that some wrongdoing has happened. In case of frivolous complaints, some degree of judgement is needed.

The internal investigation committee should be independent and should also be perceived as independent. Head of HR, Head of legal and compliance should also form part of this committee. Based on the nature of the complaint and the extent of investigation that is needed, any cross functional expert can also be onboarded in the internal investigation committee.

- ▶ WBC policies only entertain complaints from employees and not from third parties. that the CEO was receiving kickbacks from an identified party and What would be your plan of action if you, as AC Chair, receive an anonymous WBC from a third party with specific allegation others?

Preliminary inquiry (PI)/smell test should be conducted to identify if the WBC has any merit and if detailed investigation needs to be carried out. Considering the complaint is against the CEO it would be preferable to engage outside legal counsel/forensic expert. When the PI is ongoing, sending the CEO on leave is not required but oversight is required. If PI suggests detailed investigation, the AC and Board will decide based on materiality and nature of allegation, to disclose the matter to stock exchange and regulators. If need for forensic investigation arises, then it can be taken forward in consultation with AC and legal counsel. During detailed investigation, the CEO should be sent on leave and no decision should be allowed to be taken by the CEO during this period. WB policy should allow vendors and customer to raise complaints as they are key stakeholders of the company.

- ▶ What is the criteria for initiating external legal/ forensic investigation? Who should be responsible for managing it?

External legal/forensic investigations can be undertaken under two broad scenarios:

1. When the nature of the issue under investigation involves CEO/KMP
2. If the outcome of the investigation is to be submitted to a regulator/ external agency/customer

Since the investigation process has become very complex, involving various data sets, it becomes very important that the internal investigation team should be equipped with the right skill sets to perform the investigation. From past experience, a panellist narrated an incident where it was noted that internal investigation team had not maintained/preserved the data properly and hence it was deemed unsuitable to be used in court of law. The external legal/forensic investigator will conduct the

investigation in compliance with local rules and regulations such that the evidence can be used in court. General Counsel or Chief Risk Officer (if GC is not there) under the supervision of AC, should be responsible for overseeing the work of external agencies.

- ▶ Is it possible to undertake data mining on the collection of WBC over the years to draw the learnings that we can implement, the cultural areas or control weakness area? What kind of study can be done on this data set?

There are two types of analysis that can be done:

Based on the analysis of the WBC received regularly and by using technologies we can identify the areas which need improvement and can improve the process and the overall culture of the organization.

If a particular type of issue has occurred in an industry, it is important for the board and AC members to look at what is happening in their organization and if a similar issue is possible in their organization. Speaking from experience, one of the panellist stated that, it has been observed that if a significant issue has been observed in a particular company, then similar issues are possible in other organizations of the same industry.

- ▶ Are there any details on complaints against behavioural aspects of CXO's? How should the AC or board deal with such complaint?

One of the panelists had undertaken two engagements where there were regular complaints against the CEO and CFO of a company for their behavior. On doing independent review of the complaints and meeting/interviewing various employees and undertaking behavioral survey, they got both positive and negative feedback. In both the cases, the Board decided to give behavioral coaching to the CEO and CFO and a soft warning to improve their behavior with employees.

It has been observed in most cases that, companies are reluctant to review the behavioral issues of star performers, but AC or Board can do behavioral intervention and give guidance/training to such CXO's.

Other comments

One of the participants shared his experience wherein his previous organization would ignore anonymous WB complaints. When he moved to a new company, he introduced a process of external ombudsman (Retired person who is respected) whereby the WB would disclose his identity to the external ombudsman and his identity would be kept confidential during the investigation. Further, the WB would also be given regular updates.

In today's era, reputational risk is very high for companies. So along with financials and POSH complaints one should also give importance to environment issues that come under WBC.

Analysis of whistleblower policy of large Indian companies

Analysis of whistleblower policy of 21 large cap Indian listed companies to identify if they allow anonymous whistleblower complaint and if they allow external stakeholders (customer, vendor etc.) to be whistleblower. Below is the outcome of the same:

No.	Sector/Industry of the company	Allows anonymous WBC	Allow external stakeholder to be WB
1	Conglomerate	Yes	No
2	Private sector banking and financial services	No	Yes
3	IT services	Yes	Yes
4	Private sector banking and financial services	Yes	Yes
5	Housing finance company	Yes	Yes
6	Private sector banking and financial services	Yes	Yes
7	Fast moving consumer goods	Yes	No
8	Fast moving consumer goods	Yes	No
9	IT services	No	Yes
10	Engineering, construction and manufacturing	No	Yes
11	Private sector banking and financial services	Yes	Yes
12	Public sector banking and financial services	No	No
13	Telecommunication	Yes	Yes
14	Non-banking financial services	Yes	No
15	Chemicals	Yes	Yes
16	IT services	Yes	Yes
17	Automobile	No	No
18	Automobile	Yes	Yes
19	Pharmaceutical	Yes	No
20	Manufacturing	No	Yes
21	IT services	Yes	Yes

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