

Whistleblowing in the financial services sector – A global perspective

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Whistleblowing is a global issue whether in the financial services sector or more broadly. It is deployed by those with a genuine issue to raise as well as by those with an 'axe to grind'. Whatever the context for the relevant report, there are high expectations across the financial services sector as to the systems required to be in place and the reaction which is mandated.

In this briefing note, we take a global view, looking at the whistleblowing regimes and key issues to consider when the whistle is blown, for stakeholders involved in the financial services sector across the United Kingdom, France, the United Arab Emirates, Singapore and Hong Kong.



The expectations of regulators

UNITED KINGDOM

The financial services sector in the UK is principally governed and regulated by the Prudential Regulation Authority ("**PRA**") and the Financial Conduct Authority ("**FCA**"). The FCA expect¹ firms to establish and maintain appropriate and effective arrangements for disclosures by whistleblowers, including the requirement that firms maintain confidentiality and anonymity of whistleblowers where requested to do so by the whistleblower. Detailed rules and guidance are provided on what such systems should comprise in Chapter 18 of the Senior Management Arrangements, Systems and Controls part of the FCA Handbook ("**SYSC**"). Those rules provide for internal arrangements and the appointment and work of a whistleblower's champion.

An external communication campaign launched by the FCA (in mid-2021) in relation to whistleblowing, "*In confidence, with confidence*", was aimed at encouraging reports by individuals to the FCA itself, emphasising confidentiality and underlining the FCA's expectations of the way in which regulated firms should handle whistleblowing complaints directed to it.

On 4 May 2023, the FCA published a report setting out the findings of a qualitative assessment of its own handling of whistleblowers who directly reported to the FCA, which we explored in our briefing note of 15 May 2023.² The FCA's findings were concerning – as admitted by the FCA itself, it was "*disappointed to see the dissatisfaction expressed*" by respondents. While one might expect such chastening commentary to inform the FCA's reaction to the handling of whistleblowing complaints by regulated firms, it seems unlikely that there will be any dilution of the expectations set out in the relevant guidance and rules.

FRANCE

At the European Union ("**EU**") level, reports and public disclosures by whistleblowers are considered as one upstream component of enforcement of European Union law and policies.

Several European Union texts on financial matters have required Member States to put in place specific systems for the protection of persons reporting breaches. In addition, the EU Directive 2019/1937 on the protection of persons who report breaches of EU law has set up general provisions to protect whistleblowers, imposing on companies with 50 or more employees the requirement to implement a whistleblowing procedure as well as a requirement on member states to put in place external reporting channels to public authorities. French law also has general provisions regarding whistleblowers included in the so-called Sapin II Law of 9 December 2016 as amended (the "**General Regime**"), as well as specific provisions applicable to the financial sector included in the French

¹ Its expectations are set out in SYSC 18 ([SYSC 18 - FCA Handbook](#)).

² [Blowing the whistle to the FCA – the regulator's assessment of its processes for handling reports yields "disappointing results"](#).

Monetary and Financial Code (the "**Specific Regime**"), both recently amended by the Law no. 2022-401 of 21 March 2022 in order to implement the EU Directive 2019/1937 aimed at reinforcing the whistleblowers' protection, the so-called "Waserman Law". The Specific Regime generally 'trumps' the General Regime, except regarding the protections granted to whistleblowers when they are higher in the General Regime than that provided for by the Specific Regime. This can trigger some difficulties in practice.

To summarise, three notable measures have been introduced into French law to encourage the detection of breaches of financial regulations:

- (i) a requirement for financial sector supervisory authorities (i.e., the French Financial Markets Authority, "**AMF**" – *Autorité des marchés financiers*) and the French Banking Supervision Authority, "**ACPR**" – *Autorité de Contrôle Prudentiel et de Résolution*) to put in place procedures whereby any person can report breaches that they detect or observe. The AMF has issued a notice (DOC-2018-13) describing the applicable procedure, including the available channels and confidentiality rules, as well as the protective provisions laid down for anyone submitting a report. However, this notice is dated 13 December 2018 and may have to be updated with the provisions of the French Monetary and Financial Code as amended by the Waserman Law;
- (ii) a requirement for entities subject to the supervision of the AMF or ACPR to put in place internal procedures to receive and process reports alleging breaches of financial regulations. Certain entities, including credit institutions, also have to implement a procedure enabling their employees to report breaches directly to the ACPR; and
- (iii) the implementation of a whistleblower protection scheme to avoid any disciplinary action taken against whistleblowers by their employer.

UNITED ARAB EMIRATES

Abu Dhabi Global Market ("ADGM")

In December 2022, the ADGM issued guiding principles on whistleblowing (the "**ADGM Guiding Principles**"). These principles reflect the belief that a culture that supports speaking up with confidence is necessary in any progressive business environment.

The ADGM Guiding Principles are aimed at all entities operating in the ADGM, including those regulated by the Financial Services Regulatory Authority ("**FSRA**"), and are intended to set out the aims, objectives and best practice for all ADGM entities to consider in designing, implementing and maintaining their own whistleblowing frameworks. However, unlike the position in the UK, where the whistleblowing regime is mandatory for regulated firms, the ADGM whistleblowing regime is set out as guidance which is not legally binding. That said, there may be circumstances where it might be appropriate for ADGM authorities to consider whether that guidance has been followed, the most obvious example being where the FSRA is considering mitigating or aggravating factors in determining an enforcement penalty.

Dubai International Financial Centre ("DIFC")

Changes to the DIFC Regulatory Law 2004 and the Dubai Financial Services Authority ("**DFSA**") Rulebook were made to implement the DFSA's whistleblowing regime, which came into effect on 7 April 2022. The whistleblowing regime applies to all persons authorised by the DFSA to engage in financial services, or who are subject to its supervision under the DIFC's anti-money laundering regime.

Similar to the position in the UK, all regulated entities in the DIFC are required to have appropriate and effective procedures in place (in writing) to facilitate the reporting of regulatory concerns by whistleblowers, to assess those concerns and, where appropriate, to escalate regulatory concerns.

The DFSA also expects regulated firms to maintain a written record of each regulatory concern reported to it by a whistleblower, including details of the concern and the outcome of its assessment, which must be disclosed to the

DFSA on request. In addition to allowing the DFSA to gain an insight into a firm's compliance with the whistleblowing regime, these records are also likely to enable the regulator to monitor whether firms are self-reporting issues of which the DFSA would reasonably expect to be notified in a timely manner.

SINGAPORE

In Singapore, financial institutions are regulated by the Monetary Authority of Singapore ("**MAS**").

The MAS has focussed on culture and conduct in financial institutions to achieve two key outcomes: (i) ethical business practices that safeguard customers' interests and ensure fair treatment; and (ii) prudent risk-taking behaviour and robust risk management that support financial institutions' safety and soundness.

There is a requirement that financial institutions should put in place measures to promote the individual accountability of senior managers, strengthen oversight over material risk personnel and reinforce standards of proper conduct among all employees in accordance with the principles set out in the Guidelines on Individual Accountability and Conduct (the "**Guidelines**") which are applicable to financial institutions, with some exceptions.

The Board and senior management of financial institutions are responsible for overseeing the implementation of those measures. The MAS may engage with financial institutions, their Boards, senior management and other employees on their implementation of the Guidelines as part of its ongoing supervision.

An essential requirement in the Guidelines is a formalised whistleblowing programme including a requirement that whistleblowing channel(s) are available to employees, including procedures to ensure anonymity and adequate protection of employees who raise concerns over the financial institution's policies, practices, and activities via this channel, together with procedures for handling whistleblower complaints.

HONG KONG

The financial services sector in Hong Kong is regulated by several regulators, each overseeing different types of businesses. There is, for example, the Securities and Futures Commission ("**SFC**") for securities and futures-related services, the Hong Kong Monetary Authority ("**HKMA**") for banking-related and payment-related services, and the Custom & Excise Department for money service operators and the Hong Kong Police for money lending services.

Each regulator has taken different measures to promote whistleblowing practices. For instance:

- the SFC has published codes and guidelines requiring licensed corporations to report any material breach or market misconduct and to inform the SFC whether they have a whistleblowing procedure when they submit the annual business and risk management questionnaire; and
- the HKMA has issued supervisory policy manuals, including the most recent one in January 2023, suggesting that the board of directors of a financial institution should have oversight over the whistleblowing policy mechanism and requiring financial institutions to have effective mechanisms to identify possible misconduct by staff. The HKMA also issued the bank culture reform circulars to provide some guidance on what the whistleblowing policy should include.

A former non-executive director of the SFC has also expressed his view in an interview, which was published in one of the SFC enforcement reports, that there should be effective internal controls and whistleblowing policies.

Furthermore, in respect of money laundering and financing of terrorism risks, all the above regulators have published their respective guidelines which require the regulated entities to have in place effective systems for internal reporting and external reporting to the Joint Financial Intelligence Unit and prevention of tipping off.

Outside the financial services sector, there have been several attempts to push for legislation concerning whistleblowing in Hong Kong, including a motion by a Legislative Council member on legislation for the protection of whistleblowers which was moved in October 2018. However, this was not supported by the Hong Kong Department of Justice at the time.

None of the above provides a comprehensive framework or guidelines on how a company should structure its whistleblowing-related practice; nor does it specifically require a company to have good whistleblowing related practices in place. As such, most businesses in Hong Kong have yet to adopt any whistleblowing procedures and practices.

What constitutes whistleblowing and what protections apply?

UNITED KINGDOM

The regulatory regime, which is contained within SYSC 18 of the FCA Handbook, does not constrain the scope of a whistleblowing complaint. The definition of a whistleblower in the FCA's Handbook includes "*any person that has disclosed, or intends to disclose, a reportable concern (a) to a firm; or (b) to the FCA or the PRA ...*". A reportable concern is similarly broad, encompassing protected disclosures (see below), a breach of a firm's policies and procedures and behaviour likely to harm the reputation or financial well-being of a firm. The scope of a whistleblowing complaint can therefore be widely interpreted.

In the employment law context, the UK provides protection for whistleblowers through the Public Interest Disclosure Act 1998 which inserts sections into the Employment Rights Act 1996. This applies to employees, agency workers, members of limited liability partnerships, judicial office-holders and workers who are not employees. There are also specific requirements that apply to entities within the financial services sector.

Under the Public Interest Disclosure Act 1998, a protected disclosure is a disclosure made in the public interest by a worker to certain individuals such as employers, legal advisers or other "prescribed persons" such as certain regulators (including the FCA and PRA), where there is a reasonable belief that:

- (i) A criminal offence has been committed, is being committed or is likely to be committed;
- (ii) A person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (iii) A miscarriage of justice has occurred, is occurring or is likely to occur;
- (iv) The health or safety of any individual has been, or is being or is likely to be endangered;
- (v) The environment has been, is being or is likely to be damaged; or
- (vi) The information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

For the purposes of the above categories of what constitutes a "protected disclosure", it is immaterial whether the relevant failure occurred in the United Kingdom or not.

Finally, an individual that has made a protected disclosure is protected from being subject to any detriment by any act, or any deliberate failure to act, by his employer. It is also automatically unfair to dismiss an employee if the reason or principal reason for dismissal is because the employee has made a protected disclosure.

FRANCE

Under the General Regime, a whistleblower is defined as a natural person who reports or discloses, with no direct financial consideration and in good faith:

- (i) information relating to a crime or an offence;
- (ii) information relating to a threat or harm to the public interest; or
- (iii) information relating to a breach or an attempt to conceal a breach of an international commitment duly ratified or approved by France, a unilateral act of an international organisation taken on the basis of such a commitment, European Union law, law or regulation.

Facts, information and documents, whatever their form or medium, the disclosure of which is prohibited by the provisions relating to national defence secrecy, medical secrecy, the secrecy of judicial deliberations, the secrecy of judicial investigations or investigations or the professional secrecy of lawyers are excluded from the whistleblowing regime.

The Specific Regime does not provide for a definition of a whistleblower but specifies the type of breaches that are targeted, e.g., violation of the EU regulations, the French Monetary and Financial Code, the French Insurance Code, the French Mutual Insurance Code, the French Social Security Code or the General Regulation of the AMF. The law does not expressly provide that the definition under the General Regime also applies to the Specific regime, in particular regarding the good faith and absence of direct financial consideration requirements.

Facts that may constitute a breach of financial regulations can be reported both (i) through external mechanisms set up by the AMF and the ACPR and (ii) through regulated institutions' internal whistleblowing procedures.

In any event, if the person making the report qualifies as a whistleblower, that person will benefit from all the protections granted to whistleblowers under the General Regime, including the protection against any form of retaliation.



UNITED ARAB EMIRATES

ADGM

Principle 1 of the ADGM Guiding Principles sets out a broad and general guiding definition of whistleblowing as the reporting of suspected wrongdoing to someone in authority. The principle recognises that whistleblowing can have different meanings in different circumstances and does not specifically define what will constitute a "protected disclosure". It does, however, encourage firms to adopt a broad definition for disclosures that will be protected under their internal frameworks.

Principle 1 suggests that that suspected wrongdoing could include, but is not limited to, fraud, money laundering, corruption, breaches of legal or regulatory requirements, unethical conduct and/or acts to cover up wrongdoing. It also recognises that whistleblowing is distinct from an employee grievance or a customer complaint, and encourages firms to ensure that clear and comprehensible information is made available to enable this distinction to be made.

DIFC

The DIFC Regulatory Law defines a concept equivalent to a "protected disclosure" (which is termed a "qualifying disclosure") as a disclosure of information, *made in good faith*, which relates to a *reasonable suspicion* that a regulated entity, or any of its employees or officers, has or may have:

- contravened a provision of legislation administered by the DFSA; or
- engaged in money laundering, fraud, or any other financial crime.

Where the regulated entity is authorised to provide financial services, similar disclosures made about affiliates, or employees or officers of affiliates, will also be qualifying disclosures.

The list of specified persons to whom a qualifying disclosure can be made includes the regulated entity itself, its auditors, the DFSA and criminal law enforcement agencies in the UAE, among others.

SINGAPORE

The MAS requires that each financial institution should ensure that its whistleblowing policy offers employees anonymity and protection from negative consequences for raising concerns via the whistleblowing channel(s), and that all employees are made aware of the whistleblowing policy.

HONG KONG

Currently, the law and regulations in Hong Kong only protect disclosures made externally to regulators or made in connection with an ongoing proceeding or in respect of money laundering. To give two examples:

- Under the Organised and Serious Crime Ordinance (Cap. 455) (and there are several other similar legislations dealing with similar issues), a person has a positive obligation to make a suspicious transaction report to the Joint Financial Intelligence Unit if he/she reasonably suspects that property is being connected to proceeds of an indictable crime. The making of the suspicious transaction report will protect the report maker from an offence under the same ordinance in respect of dealing with any property that is connected to the proceeds of an indictable crime; and
- Under the Prevention of Bribery Ordinance (Cap. 201), a witness cannot be obliged to give information in any civil or criminal proceedings in respect of an informer's name and address.



As to protections afforded to persons making disclosures of a whistleblowing nature:

- Under the Employment Ordinance (Cap. 57), an employer is prohibited from terminating employment by reasons of the employee giving evidence in proceedings or enquiry for the enforcement of the Employment Ordinance;
- Under the various discrimination-related ordinances, it is unlawful for a person (the discriminator) to discriminate against another person on grounds that the person victimised has brought proceedings against the discriminator or given evidence or information in connection with proceedings brought by others against the discriminator; and
- Under the Competition Ordinance (Cap. 619), an employer cannot terminate the employment of an employee because the employee provided material to the Competition Commission in connection with any functions of the Competition Commission, including tackling anti-competitive actions in Hong Kong.

However, the above protections are fragmented and there is no law that protects a whistleblower from making a report to senior management, unless the company has, by its own initiative, implemented a whistleblowing policy.

Anonymity for whistleblowers

UNITED KINGDOM

Anonymity is a key feature of the whistleblowing regime and, therefore, when investigating whistleblowing complaints, firms should give due consideration to the FCA's requirement that the anonymity of whistleblowers be protected. This can be particularly complex where allegations of non-financial misconduct of a personal nature are made, as the firm's obligations as an employer may require sufficient information surrounding the allegation in order properly to respond to it, which may inevitably lead to the identity of the whistleblower being revealed. Employers must make (and be seen to make) every effort to maintain the anonymity of the whistleblower, extending to their gender where that itself could puncture the anonymity.

A failure to do so risks fuelling a perception that whistleblowers are not protected, which can reinforce a sense that the organisation does not take its whistleblowing obligations seriously. That would also run counter to the protections given to employees who have blown the whistle – that they are not dismissed for blowing the whistle (which could amount to unfair dismissal), or not being subject to any other detriment.

The firm's whistleblowing policy should give due consideration to:

- How to balance the rights of the accused and the FCA's requirement that the anonymity of whistleblowers be protected;
- How information about the complaint is to be communicated and recorded in the firm's systems; and
- To whom the fact of the complaint and/or the identity of the complainant should be disclosed.

With whistleblowing having been on the rise for some time, it was perhaps no surprise that the FCA's first enforcement action under the Senior Manager's Regime was against a senior executive for his role in an attempt to unmask a whistleblower. Mr Jes Staley, former Chief Executive of the Barclays Group, was fined a total of £642,430 for falling below the standard of care required and expected of Chief Executives, in a manner that undermined the confidence in Barclays' whistleblowing procedures. Though an extreme example, this case does highlight both the FCA's focus on the issue as pertaining directly to the 'fitness and propriety' of authorised persons and also the need to ensure that the firm's arrangements are sufficiently robust to prevent interference from senior individuals.

FRANCE

According to the French Monetary and Financial Code, external reports made to the AMF or ACPR may or may not be anonymously made, whereas for reports made internally through companies' internal channels, anonymity should be guaranteed.

If the report is not made anonymously, the procedure for collecting and handling reports, which has been established by the AMF and the ACPR, is required to ensure the integrity and confidentiality of the information collected in a report, including the allegations, the identity of the whistleblower, the persons named in the report and any third parties mentioned in the report. Violating confidentiality is punishable by criminal penalties.

UNITED ARAB EMIRATES

ADGM

Principle 3 of the ADGM Guiding Principles is dedicated to confidentiality and due process. It sets out the expectation that a firm's whistleblowing framework should protect the identity of a whistleblower through strict adherence to principles of confidentiality, which also assists in protecting the subject of the report pending due process being followed to investigate any allegations. Principle 3 notes that whistleblowing frameworks in line with global best practice would accommodate receiving reports from whistleblowers who wish to remain anonymous, but also recognises that there are circumstances in which a whistleblower's anonymity may impact a firm's ability to take action in relation to a report.

DIFC

The DIFC Regulatory Law provides protection to whistleblowers, regardless of whether their qualifying disclosure is made anonymously. The appropriate policies and procedures adopted by a firm to facilitate the reporting of regulatory concerns by whistleblowers should also permit reports to be made anonymously, and firms are required to take reasonable measures to protect the identity and confidentiality of whistleblowers. As noted in the UK context, it can be difficult in practice to maintain the anonymity of a whistleblower where the information required to understand and investigate the concerns raised may inevitably reveal the identity of the whistleblower. Firms should, however, err on the side of caution in taking all steps reasonably available to protect the identity of a whistleblower.

SINGAPORE

Similarly to the UK, the availability of anonymity is an essential requirement of the whistleblowing facility expected to be set up by financial institutions. To this end, there are requirements that whistleblowing hotlines should be operated by external vendors or internal departments with independent functions, and investigations should be conducted centrally rather than at business unit level.

HONG KONG

Whilst the preservation of anonymity of the whistleblower is an important feature, there is no requirement under Hong Kong law to ensure a whistleblower's identity is kept confidential, thus exposing the risks of the whistleblower being treated unfairly by peers.

Outside the financial services sector, in December 2021, the Hong Kong Exchange published the Corporate Governance Guide for Boards and Directors of listed companies, which contains some guidance on how listed companies should structure and implement their whistleblowing policies. This included suggestions that the listed company's whistleblowing policy should contain provisions to protect whistleblowers against retaliations. However, this guide is only for reference on recommended best practices and there is no effective penalty to ensure a listed company should observe the guidance.

Whistleblowing champions

UNITED KINGDOM

Financial services organisations that are within the banking sector (except small deposit takers) and fall within the scope of the UK Senior Managers and Certification regime (together with certain entities designated by the PRA)³ are required to appoint a "whistleblowing champion",⁴ whose responsibility is to ensure senior management oversight of the integrity, independence and effectiveness of a firm's whistleblowing arrangements. It is an FCA requirement that the whistleblowing champion has a level of authority and independence within the firm and the ability to access resources, including independent legal advice and training, as well as information sufficient to enable the whistleblowing champion to carry out their responsibilities.

The whistleblowing champion does not need to have a day-to-day operational role in handling disclosures but, if a whistleblower contacts them directly, the whistleblowing champion is responsible for identifying an appropriate course of action and may often be the intermediary between any investigations panel and the whistleblower, so as to maintain the whistleblower's anonymity.

The whistleblowing champion is also responsible for preparing and submitting an annual report on the operational effectiveness of the firm's whistleblowing procedures to the Board of the relevant financial services organisation so that the Board can consider any gaps or issues identified, again with the confidentiality of whistleblowers maintained. The importance of a whistleblowing champion's obligation to report can be seen through the FCA's final notice to *The Carphone Warehouse Limited*, where the FCA found a lack of proper systems to record and follow up on whistleblowing complaints.⁵

FRANCE

The entities subject to the supervision of the AMF or ACPR are required to implement a procedure for collecting and processing reports.

Under the General Regime, the procedure for collecting and processing reports is required to indicate the person(s) or service(s) designated by the entity to collect and process reports. The designated person(s) or service(s) shall, by virtue of their position or status, have sufficient competence, authority and means to carry out their tasks. The impartial exercise of these tasks should also be guaranteed.

Even though it is not expressly required under the Specific Regime, we are of the view that entities operating under the supervision of the AMF or ACPR should designate sufficiently competent staff members or service(s) to collect and process reports. It should also be ensured that such staff members or service(s) have the appropriate authority and means to carry out their missions, and that they receive specific training to enable them to fully carry out their responsibilities.

UNITED ARAB EMIRATES

ADGM

The ADGM Guiding Principles do not go so far as to encourage the appointment of a "whistleblowing champion" or equivalent and recognise that whistleblowing frameworks will need to reflect a firm's size, nature, complexity and resources. Principle 6 does, however, recognise that even an apparently robust whistleblowing framework can be wholly ineffective if the culture within the firm does not support whistleblowing in practice. It therefore recommends that firms set a "tone from the top" so that whistleblowing is supported, and recognises that the best whistleblowing programs are usually sponsored and ultimately overseen by the relevant entity's Board of Directors (being independent of management).

³ [Senior Managers and Certification Regime](#)

⁴ SYSC 18.4.

⁵ [Final Notice 2019: The Carphone Warehouse Limited \(fca.org.uk\)](#).

DIFC

Similar to the ADGM, there is no requirement in the DIFC to appoint a "whistleblowing champion" or equivalent, and the DFSA expects firms to tailor their whistleblowing policies and procedures to reflect their nature, scale and complexity. As is generally the case with regulatory compliance, the ultimate responsibility for oversight of, and apportionment of responsibility for, the firm's whistleblowing policies and procedures will sit with the firm's Board of Directors (or other governing body) and its senior management.

SINGAPORE

It is encouraged that financial institutions appoint culture and conduct champions and ambassadors, which take on varying roles, such as serving as role models, raising ideas and flagging possible concerns proactively, and providing a resource point for staff who have queries. However, the role differs from that of whistleblowing champions in the UK.

HONG KONG

The laws of Hong Kong do not have a concept of the whistleblowing champion.



Privacy considerations

Data protection and privacy is a key issue which firms will have to consider. In the context of whistleblowing, it introduces a few important aspects, the most notable being the need to handle personal data consistent with the rights of the data subjects. Importantly, that will include not just the whistleblower but anyone else who may be said to be involved in the matters about which the complaint is raised.

UNITED KINGDOM

In the UK, whistleblowing complaints are increasingly used alongside employment claims. This has given rise to whistleblowing complaints being received in parallel with Data Subject Access Requests ("**DSARs**"). DSARs are a fundamental right afforded to individuals under data protection laws and allow individuals to gain access to and receive copies of personal data held about them. There are strict timeframes to adhere to when responding to DSARs and depending on the individuals, the personal data you hold could be substantial. It is therefore important to have systems and procedures in place to ensure that DSARs are handled efficiently and in accordance with applicable data protection laws.

The overlap between responding to DSARs and investigating whistleblowing complaints is now well established in the UK and is a feature which needs to be considered at the outset of any whistleblowing complaint and factored into the approach adopted. However, it is worth noting that the anonymity of whistleblowers must be upheld, and you should seek to rely on appropriate exemptions set out in data protection law to do this.

FRANCE

An organisation setting up a whistleblowing system must ensure that it complies with the provisions of the General Data Protection Regulation (GDPR) and the French Data Protection Act.

When the whistleblowing systems, as is generally the case, require the processing of data relating to identified or identifiable individuals (in particular those of the author and the person or persons targeted by the alert), they are subject to the above-mentioned rules on protection of personal data.

The French Data Protection Authority ("**CNIL**" – *Commission Nationale Informatique et Libertés*) has published a non-binding set of guidelines, that has been very recently updated to take into account the Wasserman Law, to provide a tool to help public and private organisations wishing to set up systems for handling business alerts to comply with the data protection regulations.

UNITED ARAB EMIRATES

ADGM

In the ADGM, data privacy is governed by the Data Protection Regulations 2021, which are based on the EU GDPR. The ADGM regulations require firms to observe a range of data subject rights, including a DSAR equivalent. Similarly to the UK position, the requirements set out in the ADGM data protection regulations ought to be considered when dealing with whistleblowing reports.

DIFC

In the DIFC, data privacy is governed by the Data Protection Law, DIFC Law No. 5 of 2020 and DIFC Data Protection Regulations 2020, which are also based on the GDPR and include a DSAR equivalent. Those laws and regulations ought similarly to be considered when dealing with whistleblowing reports.

SINGAPORE

In Singapore, data privacy is governed by the Personal Data Protection Act 2012 (the "**Act**").

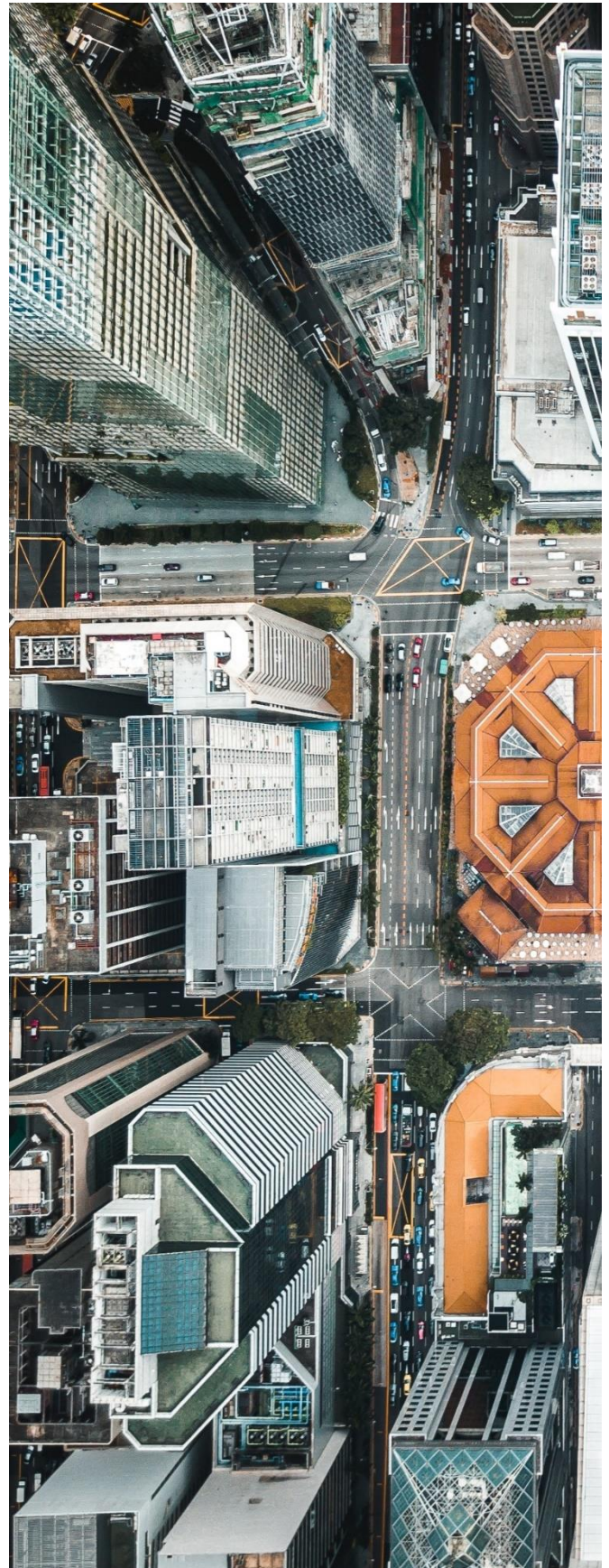
Under the Act, organisations are obligated to provide personal data requested by individuals. This could potentially include data collected via whistleblowing channels. However, data collected via whistleblowing channels may be withheld under the Act if such data constitutes *"document[s] related to a prosecution if all proceedings related to the prosecution have not been completed"* or *"personal data collected, used or disclosed without consent... for the purposes of an investigation if the investigation and associated proceedings and appeals have not been completed"*.

HONG KONG

In Hong Kong, data privacy is governed by the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**").

A person who controls the collection, holding, processing or use of personal data (a "data user") is required to comply with the six data protection principles under the PDPO. The most notable of these principles is the obligation to collect personal data lawfully and inform the data subject of the purposes for the collection and use of the personal data. As long as the data subject has been properly informed of the purposes for collection and use of the personal data (which could be for an investigation by the company into the conduct of the data subject), there is nothing to prohibit the data user using the personal data to investigate a whistleblowing report.

Another notable principle is the obligation to comply with a data access request. Similar to a DSAR, this is a request made by a data subject to a data user to (1) ascertain whether the data user is holding any personal data relating to the data subject and (2) obtain a copy of such personal data. A person subject to a whistleblowing report may therefore (in principle at least) seek to use a data access request to ascertain the report and possibly the identity of the whistleblower. That said, pursuant to the guidance note issued by the Privacy Commissioner, a data user can redact information of another person (i.e. the whistleblower) to protect the privacy of the other person.



What do I need to do next?



The breadth of requirements spanning the above jurisdictions makes any comprehensive list of required actions almost impossible. However, it is possible to identify key areas on which organisations should focus to assist in navigating the challenges to which whistleblowing regimes and whistleblowers can give rise.

Policies

Some firms will already have sophisticated and well-established whistleblowing arrangements in place that carry across jurisdictions, while others may be starting afresh. Naturally, the key is to have a coherent system which reflects the highest standards of all the jurisdictions in which the firm operates.

- For those starting fresh, it would be practical for compliance, HR and legal to work closely to establish a whistleblowing regime that is fit for purpose across all jurisdictions.
- For those who already have arrangements in place, it would be prudent to review the current policies and consider whether they remain fit for purpose or whether they need to be improved to address any gaps.

Having a system for reviewing the effectiveness of whistleblowing regimes, which ties into the annual review of policies, as well as reacting to *ad hoc* events, will be key in demonstrating that the firm has a robust and appropriately responsive system in place. A lessons learned process is an important part of a compliance programme.

Once policies and procedures have been established and/or updated as required, these will need to be clearly communicated to staff through training.

Training

Training is an issue which will need to be managed on a proportionate basis, measured against the perceived risk in the firm both locally and globally.

However, suggested training requirements include:

- **Computer-based training:** Though there are some limitations in computer-based training, this can often be the most effective mechanism for general rollout to staff, particularly when based in a number of locations. What is often overlooked in respect of computer-based training is the need to learn from the responses that employees provide. If the responses demonstrate a trend of misunderstanding or ignorance, that trend should be incorporated into the broader training and education programme.
- **Regular updates:** Frequent and regular reminders of the availability of whistleblowing hotlines, speak up arrangements, and other resources can help to keep the right to whistleblow uppermost in employees' minds. This can help with generating the right culture in a firm, culture being an ever-present issue and ever-more amorphous expectation of regulators globally.
- **Bespoke training:** Team leads and more senior staff may require more bespoke training, that determination being influenced by annual report conclusions, ad hoc events and (where applicable) the whistleblowing champion's assessment.
- **Evolving training:** Alternative methods of how to deliver training should be developed and adapted, as needed, to seek to improve the effectiveness of training.

Investigating whistleblowing complaints

When a whistleblowing complaint is made and is being investigated, points to consider will include:

- **Issues:** Do the issues raised in the complaint resonate with other issues such that a trend may be emerging which needs to be addressed more generally? Are all the issues being investigated thoroughly?
- **Reporting obligations:** Is there an obligation to make a report to external authorities, regulators or another body? What are the triggers for such reports?
- **Investigation:** How far does the firm consider that whistleblowing allegations can be investigated/addressed internally? Are there potential risks of conducting a fulsome investigation prior to notifying an external authority? Is the whistleblower being kept updated on the status of their complaint? How can that properly and fairly be managed?
- **Anonymity:** How can the anonymity of the complainant be protected properly?
- **Systems and controls:** At the conclusion of the investigation and following resolution of the whistleblowing complaint, what changes (if any) need to be made to the whistleblowing regime to make it more effective?

How can we help you?

Stephenson Harwood's global regulatory litigation and employment practices have been at the forefront of high-profile investigations and enforcement for many years. The team acts for organisations and individuals and deals regularly with authorities such as the PRA, FCA, Competition and Markets Authority and Serious Fraud Office in the UK, the DFSA in Dubai, the FSRA in Abu Dhabi, the MAS in Singapore, the HKMA, SFC in Hong Kong and regulated bodies in France as well as alongside counsel in other global jurisdictions.

The team has acted for both financial institutions and senior executives of financial institutions, assisting with regulatory investigations, complex issues regarding legal professional privilege, whistleblowing, remuneration structures, the senior managers regime and negotiating exit packages.

Should you have any questions or require any specific advice in respect of whistleblowing, be it on policies, carrying out investigations or training, please do reach out to your usual contact at Stephenson Harwood or any of the contacts detailed below, who will be happy to assist you.

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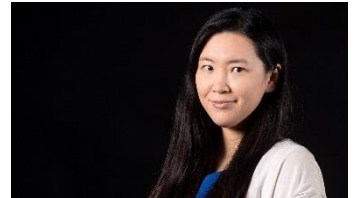
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Get in touch

If you would like to discuss how the Whistleblowing Regime affects your business, or how we can help, please reach out to your usual contact at Stephenson Harwood, or any of the key contacts listed above or below.



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