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 **NORTON ROSE FULBRIGHT**

Are you really listening?

Testing and assurance of
whistleblowing programmes



“To have an effective compliance and ethics program ... the organisation shall take reasonable steps ... to have and publicise a system ... whereby the organisation’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.”

US Sentencing Commission Guidelines Manual, Chapter 8, Section 8 B2.1

“A company’s workforce represents a valuable source of information that can be utilised to identify a potential problem, and to deal with it, before it causes significant damage to the company’s reputation or stakeholders.”

UK Institute of Chartered Accountants, Guidance for Audit Committees – Whistleblowing arrangements

“So, to stifle whistleblowing is to harm the business. Bad news tends to come out eventually, and looks worse if it appears that bosses tried to suppress it. Apart from which, wrongdoing is less likely to occur in the first place if employees know that their bosses are more inclined to hug a whistleblower than to put him in a headlock.”

The Economist, “The Age of the Whistleblower”

Norton Rose Fulbright advises corporates and financial institutions on the design, implementation and review of corporate integrity programmes, including the effectiveness of any whistleblowing programme. We believe that ethics and compliance are an integral part of any successful modern business, and we support our clients in developing robust and dynamic programmes that deliver results.

Does your whistleblowing programme work?

“There is a need for a culture in which concerns raised by staff are taken seriously, investigated and addressed by appropriate corrective measures¹”

Some of the most high-profile fraudulent behaviour in recent years has been discovered as a result of whistleblowing complaints or tip-offs. Whistleblowing programmes have become a vital element of corporate integrity programmes. So how is a truly effective whistleblowing programme achieved? A well-designed whistleblowing programme will combine the embedding of the necessary culture that actively encourages the raising of concerns with rigorous systems that investigate and respond appropriately.

A whistleblowing programme can only operate effectively in an environment that encourages, protects and values the reporting of concerns

Effective whistleblowing programmes make the raising of concerns a normal activity: models that rely on the existence of a policy or a hotline, where employees are either not aware of their reporting options or are too reluctant to raise issues for fear of retaliation, are likely to be foregoing a crucial source of internal information.

Successful whistleblowing programmes are designed by a multi-disciplinary team, supported by boards, reinforced by managers and promoted widely throughout the business, with employees trained on how to raise concerns and, where applicable, receive them. Appropriate measures are taken to support those who have the courage to raise concerns and to protect them from retaliation.

At regular intervals, company management ought to ask: is our culture conducive to employees raising issues? Is the raising of difficult issues expected, recognised company-wide and rewarded in performance management evaluations?

A whistleblowing programme is only effective if it delivers results

Effective whistleblowing programmes are results-oriented: the primary goal of a whistleblowing programme is to reduce the incidence of improper behaviour in the company and thereby achieve the desired culture within the organisation. By encouraging more regular, open communication at all levels, and allowing issues to be dealt with at an early stage before they have grown in severity, a successful whistleblowing programme will, over time, lead to a change in employee behaviour. Equally, reporting on the outcomes of any investigations undertaken is fundamental in demonstrating the organisation's commitment to its integrity programme. Outcomes should be reported to the Executive Committee, the Board of Directors and investors as appropriate and should be tailored to each of them in order to be meaningful.

At regular intervals, company management ought to ask: is our whistleblowing programme effective?

¹ Sir Robert Francis QC, “Freedom to Speak Up” review

Our services

Robust review and reinforcement of whistleblowing programmes



01 | Policy framework review and legislative mapping

Policies play a critical role in translating a company's values into the behaviours expected and communicating these values to customers, clients and the wider public. An effective integrity programme will include messages of support for an open, collaborative culture from the CEO in the Code of Ethics and in the Whistleblowing Policy. Policies will be clear, concise and accessible, with attached guidance for further information so as to minimise a whistleblower's feeling of vulnerability and simplify the reporting of issues. We conduct periodic reviews of policies to ensure they are maintained, updated to reflect current areas of risk and readily available to all employees wherever they are located.

Leading organisations ensure that they have implemented measures wherever they operate across the globe to comply with all relevant whistleblowing and data privacy laws. Entering new markets or expanding existing ones creates risk – as well as opportunity – for corporate integrity programmes, particularly as regards whistleblowing policies. Varying levels of international best practice have been adopted in public and private sector laws globally to prevent whistleblowers from retaliation. We draft non-retaliation policies and integrate them into the existing culture of an organisation.

We assess new and changed markets for our clients and deliver bespoke risk assessment plans. We provide recommendations for adapting elements of corporate integrity programmes, including whistleblowing programmes, for the affected market (for example where local cultural sensitivities make it difficult to raise concerns).

When problematic scenarios arise, our highly experienced global team advise on the legal position in each instance.

Ask yourself

Are our policies clear, complete and accessible?
Are we confident that we are compliant with global whistleblowing legislation?



02 | Investigation protocols – ensuring the handling of concerns is sensitive, robust and consistent

Critical to the success of a whistleblowing programme is a well-organised set of procedures and an effective, consistent system of response to concerns when they are raised. We design bespoke, robust investigations protocols that ensure reports are treated consistently, with fairness and the necessary independence. Our advice covers which individuals to involve and, importantly, who not to involve when handling reports. We create systems for onward referral of each report so that no concern slips through the net; each concern will be processed, investigated, escalated and/or closed as appropriate. We consolidate reports received into reports for the Board and designated Committees to ensure appropriate levels of monitoring and continual improvement.

We implement tailor-made solutions country by country, including appropriate technical and organisational measures in order to meet the relevant legal requirements and, for data protection purposes, to protect the rights of the data subjects.

Ultimately, we review ownership and execution of the investigations process to determine whether it is supporting a healthy whistleblowing culture. Our team has experience of working with a range of external hotline providers and is well-placed to benchmark their respective services against your specific needs.

Ask yourself

Is our investigations process consistent? Do we share lessons learned across the business?



03 | Cultural audits and outcomes-based assessment

It is well understood that an organisation's culture drives employees' conduct and that to effect cultural change requires senior leadership influencing a change in behaviour. A transparent, open culture will only be created, and maintained, if senior decision-makers actively embrace the raising of concerns and respond with the appropriate reflex when challenging compliance issues arise.

Our cultural audits combine the use of employee questionnaires, site-visits, interviews and small-group workshops to understand the current culture. Relevant metrics are applied to assess the culture's strategic effectiveness and its impact on the organisation. Results are used to steer strategy discussions amongst management and inform recommendations for improvements to the whistleblowing programme as well as the wider integrity programme. If elements of an organisational culture need addressing, we design training programmes aimed at strengthening a desired culture and equipping individuals with the skills to respond effectively to difficult situations (be it empowering them to raise concerns or preparing managers to support staff appropriately when they do speak up). We recognise that cultures are continually evolving and aim to put in place steps to guide that evolution appropriately.

Ask yourself

Is there an alignment between our company values and standard business practice on the ground? Are there any pervading factors, such as work-place bullying, which might inhibit whistleblowing? Have we tracked the career trajectory of those who have raised concerns? Is whistleblowing data discussed along with other business results in key strategy meetings?

Norton Rose Fulbright's business ethics and anti-corruption practice

Advising on the development, implementation and testing of corporate integrity programmes and their respective whistleblowing programmes.

Experience

We draw upon the combined insight of a global practice: our members have served in the US Department of Justice and Securities and Exchange Commission; they have acted as monitors for the World Bank and the Serious Fraud Office in the UK; they have held Chief Compliance Officer positions in large companies; and they have participated in the OECD anti-corruption peer to peer review process.

Engagement

Our business ethics and anti-corruption practice is at the forefront of international initiatives and advancements in this field, including our involvement with OECD-led anti-corruption initiatives, board membership on the UK chapter of Transparency International and research projects such as our "Countries Curbing Corruption" report which examined 41 national anti-corruption strategies.

International

We work closely with colleagues across our platform of more than 50 offices across the world in relation to issues arising under international and domestic anti-corruption frameworks. Our on-the-ground experience enables us to advise on all aspects of multi-national corporate integrity programmes and investigations, and to be attuned to local customs and culture.

Our value proposition

A bespoke solution

We tailor our services to meet the particular risks and concerns of individual clients. Our unique solutions are designed to meet their objectives in a timely and cost-predictable manner.

A dynamic team

Our team is in key enforcement jurisdictions and in challenging local markets, and we have an integrated team of legal and non-lawyer practitioners. We leverage the right resource to deliver the right advice in an effective and efficient manner.

A practical approach

We know that reviews of corporate integrity programmes can potentially lead to challenging consequences. We approach every project in a phased manner to enable our clients to make informed, risk-based decisions. Our team of compliance and investigations specialists provide support every step of the way, from programme design to criminal defence.

Global resources

Norton Rose Fulbright is a global law firm. We provide the world’s preeminent corporations and financial institutions with a full business law service. We employ 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.



◆ Our office locations

People worldwide

>7000

Legal staff worldwide

>4000

Offices

58

Key industry strengths

- Financial institutions
- Energy
- Infrastructure, mining and commodities
- Transport
- Technology and innovation
- Life sciences and healthcare

Europe

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| Luxembourg | |

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| Denver | San Antonio |
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| Los Angeles | Washington, DC |
| Minneapolis | |

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- Melbourne
- Port Moresby (Papua New Guinea)
- Perth
- Shanghai
- Singapore
- Sydney
- Tokyo

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- Dubai
- Riyadh²

Africa

- Bujumbura³
- Cape Town
- Casablanca
- Dar es Salaam
- Durban
- Harare³
- Johannesburg
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1 TNB & Partners in association with Norton Rose Fulbright Australia
 2 Mohammed Al-Ghamdi Law Firm in association with Norton Rose Fulbright US LLP
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Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices.

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