

WHISTLEBLOWING UNDER ARGENTINE LAW

INTERNAL REPORTING CHANNELS

The so-called Corporate Criminal Liability Law (Law) established the need of Compliance Programs for certain interactions with the public sector, as well as their convenience for other cases. Within the components of these Programs, although not mandatory, are the internal reporting channels. The Anti-Corruption Agency has provided certain Guidelines (Guidelines) for the content of Compliance Programs under the Law. Among them, there is a special chapter devoted to these reporting channels.

I. RELEVANCE.

These reporting channels are essential for the Compliance Programs to be effective and credible. It is necessary that the behaviors that are contrary to the ethical rules of the legal entity be detected. It has to be perceived that the organization reacts to them in a firm and fair way.

The internal reporting channel is used by employees or third parties, confidentially or anonymously, to report violations of the Code of Ethics, other compliance policies and/or illegal acts. The internal reporting channel should coexist with the normal channels of communication within the organization.

As it is not a mandatory, the measure of usefulness of an ethics reporting channel is given by different factors, such as, for example, the smaller or greater separation between those who decide inside the organization (owner, employer) and those who execute the decisions (other members). The more complex the internal organization and the greater division of tasks and hierarchies in it, the greater the need to have an ethical reporting channel of communication. Other important factors are also the number of members of the organization, its dispersion and the number of links that are generated with third parties. It must be taken into account, that the best informed about irregular behaviors are usually the employees or, eventually, the suppliers, who could see or hear them, but who, because they do not know who to go to in some cases or for fear of reprisals, remain silent.

The Association of Certified Fraud Examiners (ACFE), which biannually weighs, among other issues, the impact that this reporting channel may have on companies from around the globe, has for more than twelve years consecutively delivered the same statistics: the reporting channel is the main method of detecting fraud and irregular conduct in any organization around the world.

The organizations that have this reporting communication channel considerably reduced the fraud detection time compared to those entities that do not have this tool, while also fulfilling an important deterrence function for the attempt of this type of irregular acts and conduct. When there is an ethics reporting channel in the company, fraud schemes are detected an average of five months earlier than in companies without an ethics conduit line.

Therefore, in some organizations, even without being a legally mandatory element, the reporting channels will be essential to demonstrate the implementation of a Compliance Program that claims to be complete.

II. FEATURES.

A good reporting system must set forth:

- The obligation to internally report violations of the Code of Ethics and illegal or improper acts. For these purposes, conditions must be guaranteed to encourage the reports when due.
- Sufficient protection of the employee who reports misconduct ensuring that there are no reprisals.
- The existence of procedures that formerly pre-establish the correct treatment of the reports and the internal investigation of those that imply serious alarms to the compliance policies.

III. SECURITY.

The channels must be safe. This implies:

- The guarantee to the whistleblower that the information will be kept in strict confidentiality and will only be used for a serious and professional analysis or investigation.
- The admission of anonymous and identity reservation channels. These options must be clearly communicated to the recipients. In the case of identity reservation, it must be clarified under what conditions it will yield (for example, judicial requirements).

IV. CHANNELS.

The reporting channels can be internal and / or external. The larger organizations usually demand more professionalism and independence in the management of the channel and, therefore, a greater tendency to an external solution of first level. In such cases, it is also recommended to establish channels that ensure 24-hour service 365 days a year, with first-level safeguards for information security and the protection of personal data.

The organization can have one or more simultaneous or independent channels such as telephone, web form, application, email, post box, face-to-face channel, etc. Such plurality and variety are desirable especially in the larger organizations.

Although there is no express indication in the Law or other regulations that determine or recommend the hiring of a third party to provide these channels, more and more companies are opting for it to be provided by an independent third party, since it guarantees the confidential handling of the information and anonymity for employees and suppliers.

Existing channels have to be properly communicated and accessible to all employees as well as to third parties and related parties. Where possible, the organization should ensure that whistleblower can follow up their reports. It is advisable to have a written internal

policy or regulation that defines the different aspects related to the management of the channel, contemplating the circuit from the reception of the reports to its different treatment options.

V. CHANNEL ADMINISTRATION.

It is advisable that exists:

- Clear and known rules of handling reports. There must be a procedure for receiving and uploading incoming matters as well as a criterion for filing, processing and referral.
- Appropriate registration, management and monitoring of reported matters.
- Security and confidentiality of stored information.
- Processing of the data received in accordance with the personal data protection regulations.
- Classification filters of incoming information that allow standardizing the allocation and re-routing of reported matters.
- Appropriate and expeditious treatment of all matters reported, including the fast dismissal of irrelevant or malicious and the re-sending of those that, without constituting an ethical breach, have some internal relevance.
- Provision for an independent third party to deal with reports against the person responsible for integrity, the board, the members of the Ethics Committee or some other high authority, or a special procedure for these cases.
- Use of channel information for reports, statistics and analysis of the performance of the Program.

These recommendations can be relaxed in smaller organizations where employees have direct access to the employer or owner or directors. In any case, the alternative to be chosen must be consistent with the risks.

VI. ADDITIONAL SUGGESTIONS.

The Anti-Corruption Agency Guidelines offer some additional suggestions that may be useful to increase the effectiveness of the reporting system:

- Communicate that complaints made in bad faith will not be tolerated and that appropriate measures will be taken in such cases.
- Adopt strong sanctions against anyone who violates the anti-retaliation policy of the organization.
- Measure the effectiveness of the complaints line (for example, through satisfaction surveys, analysis of statistics produced by the channel).
- The frequency of reports outside the channel when there is a clearly established one can be indicative of its lack of effectiveness.

- Disclose the statistics regarding the reporting channel, preserving confidentiality at all times.

VII. CORROBORATION QUESTIONNAIRE.

The Guidelines also propose the following corroboration questionnaire regarding the implementation of the reporting channels:

- 1.1. Does the organization establish for its members the obligation to internally report corruption and violations of the Code of Ethics?
- 1.2. Does the organization provide one or more channels to make these reports?
 - 2.1. Is the channel accessible to all the members of the organization and third parties?
 - 2.2. Is it properly spread?
 - 2.3. Is there evidence that the public to which it is intended knows about its existence?
- 3.1. Do channels allow reporting through multiple or alternative platforms?
- 3.2. Is it possible to report confidentially?
- 3.3. Is anonymous reporting enabled?
- 3.4. Is identity reservation enabled?
- 3.5. Is the existence of these options clearly communicated before the reports are made?
- 4.1. What security measures are established for the protection of confidentiality and the security of the data stored in the reporting system?
 - 5.1. Is the ethics line internally managed or outsourced?
 - 5.2. Based on what criteria was the alternative chosen?
 - 5.3. Are enough resources dedicated to serving it?
 - 5.4. Are the training and professionalism of the persons in charge of the channel assured?
 - 5.5. Who is internally responsible for following up and investigating a complaint?
- 6.1. Are there written rules for receiving and handling the reports?
- 6.2. Are they sufficiently clear and comprehensive?
- 6.3. Does the integrity officer have access to all the reports that are made through the channel?
 - 7.1. Is there a mechanism to ensure that an independent analysis is carried out of those reports that contain allegations regarding the possible responsibility of the senior managerial or managerial authorities or the responsible / integrity committee itself?
- 8.1. Are statistics produced based on the reports? Is there a periodic control made of these statistics?

8.2. Are the statistics a fact taken into account in the actions of monitoring and continuous improvement of the program? How?

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