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When the Whistle Blows

Recent Developments in Whistleblower Statutory and Regulatory Regimes in the US, UK, EU, and MENA

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Introduction

The term "whistleblower" generally refers to a person who reports suspected corporate misconduct to their employer or to law enforcement or regulatory authorities. This article describes key legal and regulatory developments relating to whistleblowers in the United States (US), United Kingdom (UK), European Union (EU), United Arab Emirates (UAE), and the Kingdom of Saudi Arabia (KSA).

The article focuses primarily on current uncertainties in the US relating to the future of government whistleblower programs under the Trump Administration, interesting recent developments in the UK regarding a possible implementation of a reward scheme for whistleblowers, and important recent events in the UAE and KSA relating to antiretaliation protection of whistleblowers.

Principal US Whistleblower Programs and Laws

SEC WHISTLEBLOWER PROGRAM

The US Securities and Exchange Commission (SEC) launched its whistleblower program in August 2011 and amended the program rules in 2018, 2020, and 2022 to provide more clarity regarding eligibility for receipt of an award.

SEC rules define a "whistleblower" as "a person who voluntarily provides the SEC with original information in writing about a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur."[1] In order to qualify for an award, the information must lead to a recovery of monetary sanctions exceeding USD 1 million. Information is provided "voluntarily" if it is received before the whistleblower receives a request, inquiry, or demand regarding the same subject matter from the SEC or other US government body. Information is "original" if, subject to certain exceptions, it reflects the whistleblower's independent knowledge (i.e., was not

1 SEC Rule 21F-2.

obtained from publicly available sources) or independent analysis and is not already known by the SEC. [2] SEC rules also include measures to protect whistleblowers from retaliation.[3]

As of the end of fiscal year (FY) 2023, the SEC had paid awards totaling USD 1.9 billion to nearly 400 individual whistleblowers since the launch of the program in 2011. The SEC paid almost USD 600 million in awards during 2023, which was an annual record.[4]

The SEC has a process through which whistleblowers may report instances of workplace retaliation. The SEC is authorized by statute to bring an action against any employer that discharges, demotes, suspends, harasses, or in any way discriminates against an employee in the terms and conditions of employment who has reported conduct to the SEC that the employee reasonably believed violated the federal securities laws. Numerous US laws permit whistleblowers to sue their employer in federal court and seek remedies including double back pay (with interest), reinstatement, and reimbursement of reasonable attorneys' fees and other costs.

Former SEC Commissioner Paul Atkins has been confirmed as Chairman of the SEC. It will be interesting to see whether there will be any changes to the SEC whistleblower program under Mr. Atkins' tenure. In 2011 testimony before the US Senate Banking Committee, Mr. Atkins expressed concern that the then-new whistleblower program might create "perverse incentives," including frivolous tips and lessening the incentive for companies to create effective corporate compliance programs. However, there is no indication that such "perverse incentives" have occurred under the SEC whistleblower program, so it is an open question as to whether the SEC under Chairman Atkins will take any adverse action relating to the program.

THE DOJ WHISTLEBLOWER PILOT PROGRAM.

In August 2024, the US Department of Justice (DOJ) announced a "pilot program" that will provide financial awards to eligible whistleblowers who provide "original, truthful information about criminal misconduct relating to one or more designated program areas that leads to forfeiture exceeding USD 1,000,000 in net proceeds."[5] In order to qualify for an award, a DOJ whistleblower must provide information that: (i) is "original," which DOJ defines in the same manner as the SEC; and (ii) is non-public and previously not known to DOJ, or "materially adds" to information DOJ already possesses. If the whistleblower's employer has self-reported to DOJ based on the whistleblower's internal (e.g., hotline) report, s/he will still be eligible for a recovery if s/he submits a DOJ whistleblower report within 120 days of the date of the internal report.

The DOJ program extends only to the following categories of financial crimes: (i) foreign bribery and corruption cases where the wrongdoer is not an SEC reporting company; (ii) crimes involving financial institutions; (iii) bribery of government officials in the US; and (iv) health care fraud involving private insurers.

DOJ has not yet announced any whistleblower awards under the pilot program. It had been expected that the

2 Information will be considered as "lead[ing] to" a successful enforcement action if it "causes [the SEC] to open a new investigation, re-open a previously closed investigation or pursue a new line of inquiry in connection with an ongoing investigation, and [the SEC] brings a successful enforcement action based at least in part on the conduct alleged." SEC Rule 21F-4(c). A whistleblower may also be eligible for a recovery if the information s/he provides involves an ongoing examination or investigation and it "significantly contributes" to a successful outcome.

3 SEC Rule 21F-7. The SEC has been actively pursuing violations of Rule 21F-7. In January 2024, the SEC announced a record USD 18 million civil penalty against JP Morgan Securities, asserting that the use of release agreements with retail clients impeded the clients from reporting securities law infractions to the SEC, in violation of Rule 21F-7.

4 This included a USD 297 million payment to a single whistleblower who provided information that led to a successful FCPA enforcement action and criminal prosecution of Ericsson which resulted in more than USD 1 billion in fines and disgorgement. The Ericsson award is noteworthy in two respects. First, it reflects a payment of nearly 30% of the amount recovered, which is the high end of the 10% - 30% range permissible under SEC program rules. Second, the percentage was applied to the total fines and disgorgement paid by Ericsson (including a USD 520 million payment to the US Department of Justice), not only the USD 539 million disgorgement payment to the SEC. The SEC program rules provide that a recovery may be based on total recoveries obtained by the US government, not only by the SEC.

5 "Net proceeds" means the monetary proceeds remaining after victims of the crime have been compensated.

Department would initially seek to identify whistleblower reports that might lead to a relatively prompt settlement, in order to demonstrate the efficacy of the program. It remains to be seen what level of effort the DOJ Criminal Division will invest in the pilot program under the new Administration. It is expected that DOJ will seek to harmonize the terms of numerous whistleblower programs introduced by US Attorneys in several states. [6] These programs do not include award payments; instead, the reporting person is generally eligible for more preferential treatment if s/he was a participant in the alleged misconduct.

It is unclear whether the DOJ whistleblower pilot program will continue under the Trump Administration. President Trump has fired Hampton Dellinger, the head of DOJ's unit responsible for protecting whistleblowers from retaliation, and Mr. Dellinger's legal challenge to his termination has been rejected by US courts. The pilot program also expanded the reach of whistleblower rewards relating to violations of the US Foreign Corrupt Practices Act (FCPA). However, under the new Administration, President Trump issued an Executive Order imposing a 180-day suspension of FCPA enforcement, and Attorney General Pamela Bondi has instructed the DOJ's Fraud Unit to refocus FCPA enforcement on drug trafficking and human trafficking cartels, and away from the historical focus on corporate bribery. These developments may signal a retreat from the DOJ's whistleblower program.

THE FALSE CLAIMS ACT (FCA)

The FCA is the federal contracting fraud statute. It is a civil liability statute that provides for triple damages and a penalty for anyone who knowingly submits or causes the submission of a false or fraudulent claim to the United States. Common categories of claims litigated under the FCA include healthcare fraud (e.g., Medicare and Medicaid), construction fraud, procurement fraud, kickbacks, and federal grants.

The FCA contains a "qui tam" provision that permits a private person (known as a "relator") to file a lawsuit on behalf of the United States, under seal, if that person has information that the named defendant has violated the FCA. [7] DOJ must investigate the allegations, after which it may: (i) intervene in the case (i.e., participate as a plaintiff), (ii) decline to intervene, in which case the relator and his or her attorney may prosecute the action on behalf of the United States; or (iii) move to dismiss the complaint.

When the government obtains a recovery in a qui tam suit (most of which are settled prior to trial), the relator is entitled to receive 15%–30% of the proceeds, depending on whether DOJ intervened in the suit. If DOJ does not intervene and the relator prevails in the lawsuit, he or she is entitled to receive "an amount which the court decides is reasonable" in the range of 25%–30% of the proceeds. The FCA was substantially strengthened in 1988, and since that time, total settlements and judgments have exceeded USD 15.6 billion, of which USD 1.4 billion was paid to whistleblowers.

It appears likely that DOJ will increase FCA enforcement, including by bringing actions for purposes of customs and trade enforcement. In a recent speech at a conference held in Washington, DC, Michael Granston, the Deputy Assistant Attorney General for DOJ's Commercial Litigation Branch, said that the Trump Administration views the FCA as a "permanent fixture" in the government's efforts to combat fraud, waste, and abuse. He identified three priority areas: healthcare fraud, evasion of customs duties and tariffs, and procurement fraud. In view of the Administration's recent actions in the area of tariffs alone, it is likely that customs and trade enforcement will be a major category of FCA cases.

There is one note of uncertainty about the qui tam provisions of the FCA. In November 2024, a US federal judge ruled that the qui tam provisions violate the US Constitution because they empower individuals to take actions that should fall only in the purview of "Officers" of the United States, who must be appointed by the President, the courts, or the heads of Executive Branch departments. The decision has been appealed, so the issue remains unresolved. But other federal courts

6 DOJ operates throughout the US in 94 federal "Districts," each of which is headed by a "United States Attorney."

7 The term qui tam is derived from the Latin phrase qui tam pro domino rege quam pro se ipso in hac parte sequitur, or "he who brings a case on behalf of the King, as well as for himself."

that have considered this issue have rejected the constitutional challenge. It is possible that the issue could reach the US Supreme Court.

United Kingdom Whistleblower Laws & Incentives

The UK does not have a uniform whistleblower incentive program at present, relying instead on a patchwork of different approaches by various government agencies.

An individual seeking to blow the whistle, or "make a disclosure," is entitled to protection under the Employment Rights Act 1986 (ERA), the whistleblowing provisions of which were enhanced by the Public Interest Disclosure Act 1998 (PIDA). The ERA governs the rights of employees, including agency workers, trainees, and other categories of staff, but it only applies to employees, not members of the public unassociated with the organization.

To qualify for protection under ERA and PIDA, an employee must make a "qualifying disclosure" — specifically, one that involves: (i) a good-faith belief that the information is true and not motivated by personal gain; and (ii) a reasonable belief that wrongdoing has occurred, or may occur. Employees may report to their employer, a legal adviser, a Minister of the Crown (or an individual appointed by an enactment by a Minister of the Crown), or other prescribed persons.

The ERA and PEDA also include antiretaliation protections. If an employee satisfies the criteria of a protected disclosure, their employer is prohibited from subjecting them to any detrimental act or omission, and also from dismissing or selecting them for redundancy if the action was even partly motivated by the employee's protected disclosure. An employee who believes that they have suffered detrimental action may file a complaint with an employment tribunal, which may award compensation if it is found that retaliation occurred.

In summary, while UK law provides protection to employees who blow the whistle, the enforcement of that protection is entirely reliant on the employee and his/her willingness, ability, and resources to hold a retaliatory organization to account. It is unclear whether the current level of protection under the law is sufficient to encourage individuals to blow the whistle.

As mentioned above, measures to encourage whistleblowers are inconsistent across UK government agencies. The UK's Competition and Markets Authority (CMA) and HM Revenue and Customs (HMRC) both have reward schemes in place. The CMA offers rewards of up to GBP 250,000 (USD 315,000) for information relating to unlawful cartel activity. While HMRC paid a total of GBP 509,000 (USD 640,000) to whistleblowers in 2022–2023, the agency provides no formal guidance regarding its whistleblower process.

Other UK regulators have considered and dismissed the concept of incentivizing whistleblowers. In 2014, the Financial Conduct Authority and the Prudential Regulation Authority, the UK's two financial services regulators, decided against implementing incentive schemes based on research indicating that incentivizing whistleblowers would not increase the number or quality of the disclosures made. The National Crime Agency, the UK's agency combating organized crime, also does not offer rewards to whistleblowers.

Recently, the UK Serious Fraud Office (SFO) signaled a notable change in its position on the topic of incentivizing whistleblowers. While a previous Director of the SFO subjectively described incentivization as "un-British," the current Director, Nick Ephgrave, suggested a change in direction in November 2024 when he alluded to the SFO having granted immunity from prosecution to an individual in return for their assistance in an investigation. Later that month, the SFO announced that it was in the process of drafting policy proposals regarding the payment of financial incentives to whistleblowers.

The SFO has not yet released the draft proposals and has not provided an estimated date for doing so. The SFO's shift on the issue of incentives appears to stem from high-profile misfires in the prosecution of potential

corporate wrongdoing (for example, ENRC [8] and Unaoil [9]) and the limited resources available to investigate large-scale, complex, international wrongdoing.

The EU Whistleblower Directive

On October 23, 2019, the European Parliament and Council published a "Whistleblower Protection Directive" (the EU Directive) that requires organizations with more than 50 workers (broadly defined) to establish an internal whistleblower program. The EU Directive prescribes several features that member states must include in their implementing legislation, including that (i) whistleblowers have "reasonable grounds" for making a report and are not doing so for personal gain; and (ii) organizations be prohibited from retaliating against whistleblowers (with "retaliation" broadly defined) and be subject to "effective, proportionate, and dissuasive penalties" if they do so.

The European Commission published a report in July 2024 that assessed member states' transposition of the EU Directive into their laws. The report found that member states generally have transposed the EU Directive's main provisions, but that improvement is needed in certain areas, including protection against retaliation.

The EU Directive does not provide for payments of rewards to whistleblowers, and, with rare and narrow exceptions, [10] member state whistleblower laws are also focused solely on protections rather than incentives.

United Arab Emirates and Kingdom of Saudi Arabia Whistleblower Laws

UNITED ARAB EMIRATES.

There are express whistleblower protections both in the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM). There is currently no express whistleblower regime that applies across the UAE outside the DIFC and the ADGM.

DIFC Whistleblower Framework

Under Article 62 of the DIFC Operating Law, any registered entity in the DIFC is required to disclose certain conduct, including contraventions of the Operating Law, its regulations, or other specific legislation; failures to comply with obligations under certain laws; or any other matters set out in regulations. Failure to disclose required conduct or violations of DIFC regulations may result in a fine of up to USD 10,000. Article 63 protects employees who make disclosures in good faith from legal or contractual liability, other civil remedies, and dismissal or victimization by their employer. Employers who violate these protections may face penalties of up to USD 30,000.

Whistleblowers qualify for protection by reporting violations to the Dubai Financial Services Authority (DFSA) or other authorized entities. Article 68A of the DIFC Regulatory Law mandates that employers maintain the confidentiality of whistleblowers and prohibits retaliation, such as dismissal, demotion, or discrimination. The law also offers protections for employees who report misconduct, regulatory breaches, or criminal activity in good faith.

ADGM Whistleblower Framework

The ADGM introduced its Whistleblower Protection Regulations in 2024. Key elements include: (i) protection of individuals who report breaches of ADGM legislation or financial crimes in good faith; (ii) requiring employers to provide an anonymous reporting option; and (iii) providing non-retaliation protection for employees who report misconduct.

The ADGM Authority requires licensed firms to implement written policies regarding whistleblowing and its protections by May 2025. If a firm becomes subject to

8 https://www.lawgazette.co.uk/news/sfo-vital-participant-in-wrongdoing-judge-states-in-latest-enrc-judgment/5118270.article

9 https://www.lawgazette.co.uk/news/sfo-faces-third-appeal-over-unaoil-investigation/5112699.article

10 Published reports indicate that the anticompetition laws of Hungary and Lithuania provide for a payment to whistleblowers of a percentage of proceeds recovered on the basis of information they provide relating to cartel agreements.

these regulations after they come into force, it must implement the required policies by the later of: (i) the date it becomes subject to the regulations or (ii) by May 31, 2025. Unlike the US, the ADGM Authority prioritizes creating a supportive environment for whistleblowers through strong protections and anonymity, rather than focusing on financial incentives.

Broader Context of UAE Whistleblower Protections in the UAE

Whilst there is currently no UAE-wide whistleblower protection regime, there are various statutory provisions across multiple legislations that protect individuals who report certain acts or crimes. In certain cases, failure to report such crimes may result in criminal liability.

For example, Dubai Law No. 4 of 2016 on Financial Crimes introduced a level of whistleblower protections for the first time in the UAE. Under this law, individuals who report misconduct to the Dubai Centre for Economic Security are protected from retaliation, provided that the disclosure is truthful, concerns economic security, and is made to the appropriate authority. Under the law, "economic security" includes issues such as fraud, corruption, money laundering, embezzlement of public funds, bribery, and terrorism financing — activities that could undermine Dubai's financial stability, disrupt markets, harm investor confidence, or threaten public assets. While the scope of the Financial Crime Law is limited to specific disclosures relating to financial crimes, it represents an important step towards encouraging whistleblowing in the region.

Despite these advancements, risks such as fear of retaliation, defamation laws,[11] and workplace discrimination or termination could hinder whistleblowing in the UAE.

As a matter of practice, employers should establish clear internal procedures for handling whistleblower reports. Multinational companies often have dedicated whistleblowing hotlines, providing a safe and confidential way for employees to voice concerns.

KINGDOM OF SAUDI ARABIA.

Saudi Arabia's approach to whistleblower protections has evolved significantly with the introduction of the new law, On the System of Protection of Reporting Persons, Witnesses, Experts and Victims of 2024 (the "2024 Law").

The Whistleblower Protection Law

Before 2024, Saudi Arabia's legal framework for addressing corporate misconduct largely relied on broader anti-corruption laws, such as the Anti-Bribery Law, issued via Royal Decree in 1996 with subsequent amendments, which targeted corruption across public and private sectors.

The 2024 Law expands on these protections, incorporating witnesses, experts, and victims into its scope. To ensure whistleblowers exercise their right to protection, the Prosecutor-General's Office established a Centre for the Protection of Reporting Persons, Witnesses, Experts, and Victims. This body handles protection requests, makes decisions on necessary measures, and implements them in cooperation with the Ministry of the Interior and the Presidency of State Security.

The 2024 Law authorizes courts to conceal the identity and personal details of whistleblowers during legal proceedings to prevent intimidation or threats, and also to employ other anonymity measures such as behind-closed-door testimonies.

Financial Incentives and Good Faith Reporting

Whistleblowers who provide crucial information leading to the discovery of major misconduct may be eligible for compensation, particularly in cases resulting in significant financial recovery or high-profile prosecutions. The General Authority of Endowments offers financial rewards to whistleblowers who report unauthorized endowments exceeding SAR 9 million (USD 2.4 million). These reports could yield a whistleblower reward of up to 5 percent of the seized value, capped at SAR 1 million (USD 270,000).

11 For example, defamation is a criminal offense under the UAE Penal Code, punishable by up to two years of imprisonment or a fine of up to AED 20,000 (USD 5,450).

Enforcement and Oversight by Nazaha

Saudi Arabia's Oversight and Anti-Corruption Authority (Nazaha) is the central body tasked with implementing whistleblower protection laws and investigating reports. To streamline the reporting process, Nazaha has established anonymous channels, including online platforms and hotlines. The new Law reinforces Nazaha's mandate to ensure whistleblower complaints are taken seriously and that legal protections are provided throughout an investigation.[12]

Penalties for Retaliation and Corruption

Under the 2024 Law, penalties for retaliating against whistleblowers or violating their confidentiality are severe. Employers or individuals who disclose a whistleblower's identity or intimidate them face fines up to SAR 5 million (USD 1.3 million) and imprisonment. Public officials involved in retaliation may also face corruption charges, reinforcing Saudi Arabia's commitment to anti-corruption efforts.

The 2024 Law also imposes penalties for companies that fail to prevent or address whistleblower-related offenses within their organizations. Private companies can be fined or barred from public contracts for up to five years if employees engage in such misconduct.

The success of these reforms hinges on effective implementation. It is essential that organizations provide clear procedures and a supportive and trustworthy culture to encourage whistleblowing and ensure that reported misconduct is investigated thoroughly, and with whistleblower protection measures that comply with the 2024 Law.

Conclusion

Many of the developments discussed above bear close attention this year.

The US historically has had the broadest range of whistleblower reward programs, all of which are designed to create stronger incentives for reporting and mitigate the personal risks that a whistleblower often confronts. There is now uncertainty, however, about how the SEC whistleblower program will be administered under the new Administration, whether and how actively DOJ's whistleblower program will continue, and how the constitutional challenge to the qui tam provisions of the FCA will be resolved.

In MENA, it will be important to monitor how the new ADGM Whistleblower Protection Regulations and the KSA 2024 Law will be enforced. We may also see the UK's SFO announce a plan for a whistleblower reward scheme.

Especially in view of the new regulations promulgated in 2024 in the ADGM and the enactment of the 2024 Law in the KSA, it is clear that providing broad and effective protection for whistleblowers is an imperative shared by all of the jurisdictions discussed in this article.

12 Nazaha also oversees the Protection Program for Whistleblowers, Witnesses, Experts, and Victims, which offers support to individuals facing retaliation or threats. This program offers personal security support, legal and psychological support, and financial assistance. The 2024 Law also permits whistleblowers to be transferred to new jobs to avoid workplace retaliation, and also to change their place of residence on a temporary or permanent basis.

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