

Frequently Asked Questions Whistleblowing

1. What is whistleblowing?

Whistleblowing is the act of reporting actual or potential infringements of laws and regulations or reporting any misconduct or illegal activities regarding matters falling under the purview of the Financial Services Commission (FSC), with a view to promote transparency and accountability.

2. What are the relevant Acts or sections related to 'whistleblowing'?

Section 153 of the Securities Act already caters for whistleblowing provision. However, the remit of this provision is limited to infringements of the laws and regulations in the securities market.

In July 2019, section 45A was incorporated in the Financial Services Act (FSA) to extend the scope of whistleblowing provision to a report or disclosure in good faith to the FSC that is required or allowed under the relevant Acts, or that relates to a matter in respect of which the FSC has functions under the relevant Acts, whether or not the person is required to make the report.

The main objectives of this provision are to encourage reporting of any infringements of the provisions of the relevant Acts¹ and to protect whistleblowers, where they have, in good faith, reported or disclosed a matter, falling within the remit of the functions of the FSC.

¹ Relevant Acts are as defined under Section 2 of the FSA

3. Why whistleblow?

Whistleblowing is an early warning system used to avert possible risks to an organisation. Whistleblowing helps to identify wrongdoing, law-breaking, corporate negligence and malpractice, crime, and related issues which may have gone unnoticed otherwise.

From an organisational point of view, encouraging a whistleblowing culture promotes transparency, effective, and clear communication. The proper handling of whistleblowing reports and disclosures made within an organisation engenders trust and promotes high ethics for all employees. Investors, who are the clients of an organisation with strong business ethics, are more likely to have confidence that their investments are well protected and that any potential incidences of fraud are likely to be detected and stopped early.

4. Who can be a whistleblower?

The FSA provides that any person may make a report or disclosure to the FSC. Whilst the law does not specify who can be a whistleblower, there are certain preconditions to be satisfied such as:

- the person must be privy to some 'insider' information of likely misconduct or wrongdoing in the organisation (either by being employed there or by having some other contractual relationship or relationship of trust with the organisation) and capable of providing supporting evidence;
- the person must be acting in good faith; and
- any personal interest in reporting the matter must be disclosed.

5. What is meant by 'good faith'?

The term '*good faith*' is a legal and ethical principle interpreted as requiring that the person reasonably believes that the information he is reporting is true and is not motivated by malice and with no direct financial consideration.

Pursuant to section 45A(4) of the FSA, any person who knowingly makes a false, malicious or vexatious disclosure shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

6. What can be reported?

Any information pertaining to any malpractices within an organisation which a whistleblower has reasonable grounds to believe that it may have a bearing on the functions of the FSC can be reported.

Information submitted should be as specific, credible and as timely as possible. The whistleblower must describe the relevant facts in sufficient detail and where possible, provide documentary evidence to support the facts. It is important, among other things, to provide details of the suspected infringement, the name and position of the reported person, the exact location where the suspected wrongdoing has happened/is happening, the period to which the report refers and any other element that the reporting person deems relevant.

The FSC does not encourage any party to obtain any information or evidence by illegal means or which they do not have a right to access or use.

7. What are the channels available for whistleblowing?

Whistleblowing can be made via two channels: *internal and external*.

Internal whistleblowing is when the misconduct or fraud is reported via a dedicated and clearly communicated reporting mechanism within the concerned organisation.

External whistleblowing is when whistleblowers report the wrongdoings to relevant authority outside their organisations, such as to the FSC.

Many licensees of the FSC have an internal whistleblowing process in place, and if the whistleblower feels confident in doing so, he/she may wish to follow this process before reporting a matter to the FSC, although this is not mandatory.

8. When can a whistleblower escalate the matter to the FSC?

The first recourse for a whistleblower is to report the matter to the senior employees within the concerned organisation.

It may be appropriate for the whistleblower to channel his/her disclosure externally, namely to the FSC or other relevant law enforcement agencies or competent authorities, for instances where:

- A formal internal report has already been made but no action has been taken;
- senior employee(s) of the organisation is(are) or may be implicated;
- the whistleblower may be subject to occupational detriment;
- the external report is justified by the urgency of the matter; or
- it is likely that evidence will be concealed or destroyed.

9. What happens when the matter is reported to the FSC?

The FSC has set up Whistleblowing Desk to handle whistleblowing reports.

The Whistleblowing Team will analyse and investigate the report while taking strict measures to keep the whistleblower's identity confidential.

If additional information or clarification is required after having analysed the report, a member of the dedicated team will contact the whistleblower in complete confidence, unless the whistleblower has explicitly stated that he/she does not wish to be contacted.

10. Why do whistleblowers need protection?

Persons raising concerns about misconduct within organisations can be subject to significant repercussions such as victimisation, demotion, retaliation, discrimination, reprisals, dismissal, defamation action and/or court proceedings. As a result, people who identify misconduct or wrongdoing may decide not to disclose the information for fear of the repercussions. As such, the misconduct or wrongdoing that remains hidden is often perpetuated.

Effective legal protection of whistleblowers is therefore essential to create an environment that encourages reporting of misconduct, fraud and wrongdoing and ensures that those reporting, in good faith, are not subject to any form of victimisation or retaliation.

11. What protection is available to whistleblowers?

No criminal or civil action shall lie against any person who makes a report or disclosure in good faith to the FSC that is required or permitted under the relevant Acts, or that relates to a matter in respect of which the FSC has functions under the relevant Acts, whether or not the person is required to make the report.

The FSC, shall not, without the consent of the person making reports or disclosure under section 45A of the FSA, disclose the identity of that person except where it is necessary to do so for the fulfilment of the functions of the FSC.

Any person who commits an act of victimisation or retaliation against a person who has made a disclosure or report pursuant to this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for term not exceeding one year.

“Victimisation” or “retaliation” is defined under section 45A of the FSA as an act –

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or
- (d) amounting to threats or reprisals.

Any person who knowingly makes a false, malicious or vexatious disclosure under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

12. Can the whistleblower submit information anonymously?

While the FSC accepts anonymous whistleblowing reports, whistleblowers are encouraged to provide their contact details to assist the FSC in clarifying or obtaining further information for the purpose of investigating into the improper conduct/wrongdoing.

The wishes of any person who prefers to remain anonymous will be respected. However, in doing so, the FSC’s ability to investigate or act on the alleged improper conduct/wrongdoing will be limited.

13. Will the identity of the whistleblower be kept confidential?

The FSC, shall not, without the written consent of the person making reports or disclosure under section 45A of the FSA, disclose the identity of that person except where it is necessary to do so for the fulfilment of the functions of the FSC.

14. What is the status of a whistleblower who provides anonymous disclosure?

Whilst the FSC respects the desire of a whistleblower who wishes to remain anonymous, this will nonetheless curtail the FSC's ability to act fully on the disclosure made. It will also curtail the possibility of the whistleblower from being protected against any form of victimisation or retaliation.

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Disclaimer: This FAQ has been prepared for guidance and information purposes only and should not be construed as legal advice.

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