

Nigeria - Whistleblowing

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1. LEGISLATION | NOTABLE CASE LAW

1.1. List any specific whistleblowing legislation

Nigeria does not have any specific or comprehensive whistleblowing legislation. There are, however, several bills before the National Assembly which aim to regulate the receipt and investigation of wrongdoing in the public sector, as well as the protection of whistleblowers from reprisals and other adverse actions.

In the absence of specific whistleblowing legislation, the Federal Ministry of Finance has set up a whistleblowing programme, which is designed to encourage members of the public to report any violation of financial regulations, mismanagement of public funds and assets, financial malpractice, fraud and theft. Members of the public are encouraged to report any of the above-mentioned infractions by submitting an anonymous tip on the Federal Ministry of Finance Whistleblowing Portal.

1.2. List any sector-specific whistleblowing legislation

The Whistleblowing Guidelines for Pensions 2008 ('the PENCOTM Guidelines') were issued, on 1 June 2008, by the National Pension Commission ('PENCOTM'), which is the body responsible for the regulation of the pension industry in Nigeria. The PENCOTM Guidelines outline the methods for reporting violations of the Pension Reform Act, 2014 ('the Pension Reform Act') and other laws applicable to pension fund custodians, pension fund administrators and closed pension fund administrators (collectively referred to as 'the Pension Institutions'), as well as the penalties for such violations. Directors, management, employees and any other person(s) dealing with the Pension Institutions are required to report any violation of the Pension Reform Act or any other applicable laws or regulations, to PENCOTM. The PENCOTM Guidelines provide for the protection of whistleblowers and mandates of Pension Institutions to ensure that its members of staff are aware of their responsibilities with regard to whistleblowing and that they are conversant with reporting procedures

with regard to whistleblowing and that they are conversant with reporting procedures.

The Code of Corporate Governance for Banks and Discount Houses in Nigeria and Guidelines for Whistleblowing in the Nigerian Banking Industry 2014 consists of:

- the Code of Corporate Governance for Banks and Discount Houses in Nigeria ('the Corporate Governance Code'), which, under Section 5.3 requires banks and discount houses to have a whistleblowing policy, which must be made known to employees and other stakeholders. The policy must contain a whistleblowing mechanism which includes an assurance of confidentiality that encourages all stakeholders to report any unethical activity to the bank and/or the Central Bank of Nigeria ('CBN'). Failure to comply with this provision will attract a fine of NGN 5,000 (approx. €12) for each day during which the failure occurs. Persistent failure to comply with this provision may be a ground for the revocation of the bank/discount houses' licence; and
- the Guidelines for Whistleblowing in the Nigerian Banking Industry ('the CBN Guidelines'). The CBN Guidelines became mandatory and effective from 1 October 2014, providing a minimum standard to be observed by all financial institutions under the supervisory purview of the CBN in relation to whistleblowing. The CBN Guidelines provide for the reporting of alleged unethical conduct of employees, management, directors and other stakeholders of a bank or any other financial institution. Banks and other financial institutions are required to have a whistleblowing policy which should be made known to employees, management, directors and other stakeholders such as contractors, shareholders, job applicants and the general public. The board of the bank or of other financial institution is responsible for implementing the whistleblowing policy and establishing a whistleblowing mechanism for reporting any illegal or unethical behaviour. The policy is to be reviewed every three years, and the banks or the other financial institutions are required to notify the regulatory authorities which have power over them, of all such reviews. The policy is to be disclosed on the institution's website and should include a dedicated hotline or email address and other electronic means devices that can be used anonymously to report unethical behaviour. The CBN Guidelines provide for the protection of whistleblowers and appropriate sanctions for banks or any other financial institutions that contravene the provisions of the guidelines. Banks and other financial institutions are required to make quarterly returns to the CBN and the Nigerian Deposit Insurance Corporation on all whistleblowing reports

and corporate governance related breaches, and to include a whistleblowing compliance status report in their audited financial statements.

The Codes of Corporate Governance for Other Financial Institutions in Nigeria ('the Code for Other Financial Institutions') were issued, on 24 October 2018, but became effective, on 1 April 2019, and apply to microfinance banks, development finance banks, primary mortgage banks, mortgage refinancing companies, finance companies and bureaux de change. Section 5.3 of the Code for Other Financial Institutions requires finance companies to have a whistleblowing policy, which must be made known to employees and other stakeholders. The policy must contain a whistleblowing mechanism which includes an assurance of confidentiality that encourages all stakeholders to report any unethical activity to the bank and/or the CBN. Financial companies are required to submit returns on the compliance with the whistleblowing policy on a semi-annual basis to the Director of the Other Financial Institutions Supervision Department, not later than seven days after the end of the relevant period.

Disclosure in the website, annual and periodic financial reports or by any other appropriate means of financial companies are required to include all regulatory and/or supervisory contraventions during the year under review and infractions uncovered through whistleblowing, including regulatory sanctions and penalties.

Stakeholders shall have the right to freely communicate their concerns about any illegal or unethical practices to the board of directors. Where such concerns border on the activities of the board of directors, such individuals shall have recourse to the CBN.

Failure to comply with this provision will attract a fine of NGN 5,000 (approx. €12) for each day during which the failure occurs. Persistent failure to comply with this provision may be a ground for the revocation of the bank/discount houses' licence.

Section 5.06 of the Code of Business Ethics and Principles on Corporate Governance for the Insurance Industry 2009 ('the Code of Business Ethics') requires the boards of insurance companies to monitor potential risks within the company and in this regard, they are required to encourage honest whistleblowing. Section 7.03 of the Code of Business Ethics also requires the board of directors' audit committee to review the company's procedures for encouraging honest whistleblowing.

Section 306 of the Investments and Securities Act 2007 ('ISA') provides that an employee of a capital market operator or public company shall have the right to disclose any information connected with the activities of his work place which tends to show one or more of the following:

- that a criminal offence has been, is being or is likely to be committed;
- that a person has failed, is failing, is likely to fail or otherwise omitted to comply with any legal obligation to which he is subject; and

- any legal obligation to which he is subject, and
- that any disclosure tending to show any matter falling within (a) or (b) above has been, is being or is likely to be deliberately concealed.

It is immaterial whether the relevant failure occurred, occurs or would occur in Nigeria or elsewhere, and whether the law applying to it is that of Nigeria or any other country or territory.

Rulebook of the Nigerian Stock Exchange 2015 ('the NSE Rulebook'):

- Rule 26.19 of the investors' protection fund rules, under Chapter 10, provides that the board of trustees of the Nigerian Stock Exchange ('NSE') Investors' Protection Fund ('the Board') shall establish and maintain a system to receive disclosures in respect of contraventions as required in the ISA and acts on them, where appropriate. In 2014, the NSE launched X-Whistle, a whistleblowing portal for secure and effective submission of information relating to violations of rules and regulations in the Nigerian capital market. The NSE whistleblowing portal allows any person (an employee, an investor, a compliance officer, an issuer, a stockbroker or any member of the public), on an anonymous basis, to raise genuine concerns about unethical or unlawful conduct by market participants with the objective of protecting market integrity.
- Rule 1.6 of the dealing members' rules, under Chapter 1, requires every dealing member of the NSE to observe the rules and regulations in the NSE Rulebook and to immediately report any breach of the articles or rules and regulations by any other dealing member in writing to the National Council of the NSE, or through the branch councils to the National Council of the NSE. Any dealing member, being aware of any breach on the part of another dealing member and failing to report the same to the Council as aforesaid, shall himself/herself be guilty of a breach of these rules and regulations.

1.3. List any additional applicable legislation

Economic and Financial Crimes Commission Act, Laws of the Federation of Nigeria 2004 ('the EFCC Act') under its Section 38, grants the Economic and Financial Crimes Commission ('EFCC') the power to 'seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under the Act.' Additionally, Section 39 of the EFCC Act states that the EFCC officers 'cannot be compelled to disclose the source of information or identity of the informants except by the order of the court.'

Section 3.1.5(i) of the Nigerian Data Protection Regulation 2019 ('the Data Protection Regulation') requires all organisations that deal with the collection or processing of personal data to conduct an audit of their privacy and data protection practices within the first half of 2019 stating the policies

audit of their privacy and data protection practices, within the first half of 2019, stating the policies and procedures of the organisation for monitoring and reporting violations of privacy and data protection policies.

The Data Protection Regulation provides that where personal data is obtained in the course of a transaction intended for the processing of personal data or actual processing of personal data, the consent of the accused is required for the collection and/or processing of such personal data. Even though the Data Protection Regulation does not stipulate a timeline for the storage of personal data, a data controller is required to inform the data subject of the period for which the personal data will be stored, or if possible, the criteria used to determine that period. This notification is required prior to collecting personal data from the data subject.

The Code of Corporate Governance for Public Companies in Nigeria 2013 ('the SEC Code') was issued by the Securities and Exchange Commission ('SEC') and provides in its Section 30.4(i) that the board of the audit committee ('the Board') of a public company shall in addition to its statutory functions, review and ensure that adequate whistleblowing procedures are in place. The Board is required to provide a summary of issues reported to the chairman.

Section 32 of the SEC Code requires all public companies to have a whistleblowing policy which should be known to the employees, and stakeholders such as contractors, shareholders, job applicants and the general public. The Board is responsible for implementing the policy and establishing a whistleblowing mechanism for reporting any illegal or substantial unethical behaviour. The whistleblowing mechanism is required to include a dedicated hotline or email system that could be used anonymously to report unethical practices. A designated senior level officer reviews the reported cases and initiates the appropriate action, if necessary, at the level of the board of directors or the CEO/MD to redress the situation. The role of the designated senior level official assigned to review a case is also to provide the chairman of the Board with a summary of reported cases, cases investigated, the process of investigation and the result of the investigation.

Section 26(1) of the Corrupt Practices and Other Related Offences Act 2000 ('the Corrupt Practices Act') provides that any public officer to whom any gratification is given, promised, or offered, in contravention of any provision of the Corrupt Practices Act, shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Independent Corrupt Practices And Other Related Offences Commission ('ICPC') or police officer. Section 26(2) of the Corrupt Practices Act further provides that any person from whom gratification has been solicited or obtained, or from whom an attempt has been made to obtain such gratification, in contravention of any provision of the Corrupt Practices Act, shall, at the earliest opportunity thereafter, report such soliciting or obtaining, or attempt to obtain the gratification together with the name if known or a true and full description

attempt to obtain the gratification together with the name, if known, or a true and fair description of the person who solicited, or obtained, or attempted to obtain the gratification from him, to the nearest officer of the ICPC or police officer. Any person who fails without reasonable excuse to comply with Sections 26(1) and (2) of the Corrupt Practices Act shall be guilty of an offence and shall on conviction be liable to a fine not less than NGN 100,000 (approx. €245) or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

Section 11.4 of the Code of Corporate Governance for the Telecommunications Industry 2016 ('the Telecoms Code') requires the board of telecommunications companies to put in place, mechanisms that will aid the easy reporting of unethical or illegal practices. The whistleblowing mechanism is subject to review by the board. The board is also required to implement a code of ethics which aims to build an ethical culture within the organisation. The telecommunication companies are also encouraged to implement whistleblowing policies which encourage a confidential reporting process covering fraud and other risks.

1.4. List any notable decisions. I.e. case law or decisions from supervisory authorities

In *Olu Ibirogba v. The Council of the Federal Polytechnic Yaba & 2 Ors Suit No. NICN/LA/473/2015*, delivered by the Honourable Justice Osatohanmwun Ayodele Obaseki Osaghae, on 7 June 2018, the claimant, an accountant in the Federal Polytechnic, Yaba, was suspended and eventually dismissed from his duties at the school after he alleged that a former rector of the school, Dr. Margaret Kudirat Ladipo was involved in financial misappropriation and kickbacks, involving hundreds of millions of Naira. He instituted this action to contest his dismissal. The National Industrial Court of Nigeria ('the Court') reinstated the claimant and ordered the payment of all salaries and entitlements due to him from the date of his suspension and subsequent dismissal up to the date that he was reinstated. The Court also awarded NGN 20 million (approx. €49,550) in damages to the claimant for his unfair dismissal.

In *Aaron Kaase v. The Chairman, Police Service Commission & 2 Ors Suit No. NICN/ABJ/231/2015*, delivered by the Honourable Justice Rakiya Bosede Hastrup, on 28 November 2017, the claimant had petitioned in May 2015 both the EFCC and the ICPC alleging financial misappropriation of more than NGN 275 million (approx. €679,985) against the chairman of the Police Service Commission. Shortly after Mr. Kaase's petition, he was charged with criminal breach of trust, cheating, threat to life and unlawful possession of the document and was subsequently suspended. The court set aside Mr. Kaase's suspension, having declared it null and void and recalled him to his normal duties and ordered the defendants to pay all the emoluments and entitlements accruable to him during the period of his suspension until the date on which he was recalled

ing the period of his suspension until the date on which he was recalled.

2. GUIDELINES

There are no additional guidelines and frameworks other than those mentioned in sections 1.2 and 1.3.

3. OVERVIEW

3.1. Outline the legislative protection for whistleblowing

Section 306(5) of the ISA provides that no employer shall subject an employee to any detriment by an act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of the ISA.

The protections under the PENCOM Guidelines are as follows:

- Section 2.1.4 provides that the PENCOM shall protect the identity of the whistleblower even in the course of an investigation, resulting from the report; and
- Section 2.1.5 provides that where an employee of a pension institution reports the unethical or illegal operations or activities of his employer, the pension institution shall deliver a written undertaking to the PENCOM, stating that it shall not victimise the employee. In the event that the employee is victimised, the PENCOM shall be obliged to employ appropriate regulatory tools to offer redress to the employee concerned.

The protections under Section 4 of the CBN Guidelines are designed to offer protection to whistleblowers that disclose concerns, provided that the disclosure is made in a reasonable belief that it is intended to show malpractice or impropriety and that the disclosure is made to an appropriate authority or person. The protections under the CBN Guidelines include:

- concealing the identity of the whistleblower; and
- prohibition of detrimental treatment of the whistleblower by the bank or other financial institutions on the ground that the whistleblower made a disclosure.

Section 39 of the EFCC Act provides that the officers of the EFCC shall not be compelled to disclose the identity of an informant or the source of the information, except by the order of the court.

Section 48(1) of the Corrupt Practices Act provides that the identity of an informant and all other circumstances relating to the information, including the place where the information was given, shall not be disclosed or be ordered or required to be disclosed to the public but only to the trial judge and the defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal. The Corrupt Practices Act further provides that if any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or is liable to inspection in any civil, criminal or other proceedings in any court, or other authority contains any entry or other matters in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

3.2. Outline the whistleblowers who are protected under the law. E.g. workers, agents, etc.

NSE Rulebook: Employees and directors of listed companies, employees and directors of capital market operators, auditors and reporting accountants, staff of regulatory bodies, media professionals, members of shareholders associations and members of the public.

PENCOM Guidelines: The compliance officer of the Pension Institution, the directors, management, employees and any other person that has dealings with the Pension Institution.

CBN Guidelines: Employees, management, directors and other stakeholders of banks and other financial institutions such as contractors, shareholders, job applicants, and the general public.

Federal Ministry of Finance Whistleblowing Programme: Any person who voluntarily discloses to the Federal Government of Nigeria a possible misconduct or violation that has occurred, is ongoing or is about to occur with specific concerns which are in the public interest.

EFCC Act and Corrupt Practices Act: Any informant.

ISA: The employee of a capital market operator or public company.

3.3. What kind of disclosures or actions are protected under the law? – internal or external reporting?

Federal Ministry of Finance Whistleblowing Programme: Disclosures made in the public spirit and in good faith are protected, regardless of whether or not the issue raised is upheld against the accused. This reporting is external as it is done on the Ministry of Finance Whistleblowing Portal

accused. This reporting is external, as it is done on the Ministry of Finance Whistleblowing Portal.

CBN Guidelines: The CBN Guidelines protect disclosures made in the reasonable belief that it is intended to show malpractice or impropriety and to an appropriate person or authority. The reporting is to the head of internal audit of the bank or other financial institution, the CBN and / or other appropriate agencies.

PENCOM Guidelines: The PENCOM Guidelines protect disclosures made in good faith. Section 6.1.4 of the PENCOM Guidelines, provides that if an allegation is made in good faith, but it is not confirmed by the investigation, no action shall be taken against the whistleblower. If, however, the whistleblower made allegations that were malicious or simply cause anger, irritation or distress, disciplinary action may be taken against the whistleblower. The disclosure obligation under the PENCOM Guidelines is to the PENCOM.

The EFCC Act and the Corrupt Practices Act: These Acts protect true statements made to the officers of the EFCC and the ICPC in relation to offences covered by the EFCC Act, the Corrupt Practices Act and other applicable legislation. Reports under these Acts are made to the EFCC and the ICPC.

SEC Code: The SEC Code is silent on disclosures that are protected. It would, however, appear that all disclosures pursuant to the SEC Code will be protected. The disclosure under the SEC Code is to be made to a designated senior officer in the company.

ISA: The ISA protects disclosures made by an employee in good faith to the appropriate authority, which the employee reasonably believes to be substantially true and which disclosure is reasonable to be made by the employee in the circumstance of the case. The reporting under the ISA can be done to any of the following:

- the employer;
- where the employer fails, refuses or omits to act, to the Commission; or
- where the relevant failure or omission relates solely or mainly to the conduct of a person other than his employer, or any other matter for which a person other than his employer has legal responsibility, to that other person.

3.4. Is legal protection limited to certain subject matters? E.g. criminal offences, health and safety.

Federal Ministry of Finance Whistleblowing Programme: The disclosures or actions covered under the programme include violation of government's financial regulations, mismanagement or misappropriation of public funds and assets, information on stolen public funds, information on

misappropriation of public funds and assets; information on stolen public funds; information on concealed public funds, financial malpractice or fraud, theft, collecting/soliciting bribes, corruption, diversion of revenue, underreporting of revenue, conversion of funds for personal use, fraudulent and unapproved payments, splitting of contracts, procurement fraud, violation of public procurement procedures. The programme, however, does not apply to personal grievances concerning private contracts.

CBN Guidelines: The acts covered under the scope of these guidelines include all forms of financial malpractice, impropriety or fraud, failure to comply with a legal obligation or statutes, actions detrimental to health and safety or the environment, any form of criminal conduct, improper conduct or unethical behaviour, failure to comply with regulatory directives, other forms of corporate governance breaches, connected transactions, insider abuses, non-disclosure of interest and an attempt to conceal any of the above mentioned actions. The information disclosed must indicate that any of the above mentioned infractions have been committed, that a person has failed to comply with banking laws, internal policies and procedures and that someone has concealed an infraction or failure to comply with applicable banking laws, internal policies and procedures.

PENCOM Guidelines: Section 2 provides that reporting shall be in relation to the breach of the Pension Reform Act, codes, guidelines, rules and regulations issued by the PENCOM in relation to Pension Institutions. Section 1.2, however, requires that the breach must relate to significant matters. A breach is significant where a contributory cause of the breach is dishonesty including fraud, bribery and other corrupt practices, misuse/misappropriation of assets or contributions, inadequate controls resulting in deficient administration, poor corporate governance, failure to pay contributions correctly or promptly, inappropriate decision making practices or acting or failing to act in the face of a deliberate contravention of the law, regulations, guidelines and rules issued by the PENCOM. A breach is of material significance to the PENCOM if it negatively impacts on the function of the PENCOM and includes substantial failure in relation to the remittance of the right amount of contribution into the Retirement Savings Account ('the RSA') and at the right time by the employer, legitimate and timely payments out of the pension fund by the PFA, investment of pension funds in line with the provisions of Regulation on Investment of Pension Fund Assets issued by PENCOM, proper administration of the pension fund, maintenance of proper records, and issuance of accurate, clear and timely information to RSA holders.

The SEC Code:

- the disclosures protected are disclosures in relation to any illegal or substantial unethical behaviour;
- the disclosures that are to be made to the NSF include market abuse financial fraud

the disclosures that are to be made to the FSE include, market abuse, insider trading and undeclared conflict of interest;

- disclosures under the ISA are in relation to any criminal offence which has been, is being or is likely to be committed, failure or omission to comply with any legal obligation to which a person is subject and concealment of criminal offences, failure or omission to comply with a legal obligation; and
- the EFCC Act and the Corrupt Practices Act provide for the disclosure of offences relating to financial malpractices, money laundering, terrorism, corruption and other related offences.

3.5. What information do employees have to be provided with about a whistleblowing scheme?

The whistleblowing policy of an organisation should be properly documented and made known to all the employees and stakeholders of the company. The employees and stakeholders should be made aware of their responsibility in relation to whistleblowing and should be provided with relevant information to enable them make disclosures.

4. NOTIFICATION, REGISTRATION AND APPROVAL OF WHISTLEBLOWING SCHEMES

4.1. Is prior notification/registration with the data protection authority or any other body, such as a works council required? If so, how must this notification/registration be made?

Banks and other financial institutions were required to forward their whistleblowing guidelines to the CBN within three months, effective from 16 May 2019. Similarly, banks and other financial institutions are also required to notify the regulatory authorities of all the reviews of their whistleblowing policies.

4.2. Is prior approval of the scheme by the data protection authority or any other body, such as a works council required? If so, how must this approval be sought?

No prior approval is required.

5. MANAGEMENT OF WHISTLEBLOWING SCHEMES

5.1. What are the specific internal organisational requirements for the management of a whistleblowing scheme?

Public companies:

- establishment of a whistleblowing mechanism and the implementation of a whistleblowing policy that assures confidentiality;
- notification of employees and other stakeholders in relation to the existence of the whistleblowing policy;
- existence of a dedicated email or hotline, which can be used anonymously;
- existence of a designated senior level officer to handle disclosures; and
- review of reported cases and the result of investigations by the chairman of the board audit committee.

Banks and other financial institutions:

- establishment of a whistleblowing mechanism and the implementation of a whistleblowing policy that assures confidentiality;
- notification of employees and other stakeholders in relation to the existence of the whistleblowing policy;
- existence of a dedicated email or hotline, which can be used anonymously;
- existence of a head of internal audit to handle disclosures;
- review of reported cases and the result of investigations by the chairman of the board audit committee; and
- non-victimisation of whistleblowers.

Pension institutions:

- notification of employees and other stakeholders of their responsibility to report any breach of the Pension Reform Act, codes, guidelines, rules and regulations issued by the PENCOR, in the course of the company's business to the PENCOR;
- sensitisation of employees and other stakeholders on the reporting procedures; and
- non-victimisation of whistleblowers.

5.1.1. With whom does the responsibility lie for the management of the scheme?

The designated senior level officer of a public company or the head of internal audit of a bank or other financial institution is charged with the management of the scheme. These individuals are, however, required to provide the chairman of the board audit committee with a summary of cases reported and the result of the investigation.

The PENCOM Guidelines do not require the establishment of a whistleblowing scheme. The chief compliance officer of a pension institution is, however, responsible for reporting any breaches of applicable laws to the PENCOM.

5.1.2. Does a separate department isolated from the HR department have to be created?

The whistleblowing laws do not require the creation of a separate department in an organisation, for the management of the whistleblowing scheme. All the applicable laws, however, mention specific individuals, who are charged with the management of the whistleblowing scheme. Having said this, an organisation may choose to have a whistleblowing department which is isolated from the HR department.

5.1.3. Are there any specific hotline requirements? E.g. multilingual approach.

The SEC Code and the CBN Guidelines both require the establishment of a dedicated hotline, as an alternative to the provision of an email address. Beyond this, however, there are specific requirements in relation to the operation of a hotline.

5.2. Is it possible to use external service providers? If so, what obligations and liabilities are imposed on the external service providers?

The relevant rules do not preclude the use of external service providers.

6. ANONYMITY OF WHISTLEBLOWERS

6.1. Is anonymous whistleblowing permissible? If so, in what circumstances and are there any special precautions required?

The CBN Guidelines and the SEC Code provide that whistleblowers may choose to remain anonymous when reporting. Public companies, banks and other financial institutions are, therefore, required to provide facilities that can be used for anonymous reporting

quired to provide facilities that can be used for anonymous reporting.

Information can also be submitted anonymously on the Ministry of Finance Whistleblowing Portal.

6.2. Does the confidentiality of reports made through whistleblowing schemes have to be guaranteed? If yes, are there any exceptions to this guarantee?

Banks and other financial institutions are required to establish whistleblowing policies that assure confidentiality.

Under the EFCC Act and the Corrupt Practices Act, the officer to whom a report is made cannot be compelled to disclose the identity of a whistleblower, except by an order of the court.

The PENCOP will protect the identity of a whistleblower, even in the course of an investigation. There are, however, special circumstances where the identity of the whistleblower may need to be disclosed to facilitate the investigations into the report.

The confidentiality of a whistleblower under the Federal Ministry of Finance whistleblowing programme is assured to the fullest extent possible, within the limitations of the law. If the whistleblower chooses not to disclose their identity, there will be no record of the whistleblower's identity. If the whistleblower chooses to disclose their identity, the identity will only be disclosed in circumstances required by law.

Generally, the confidentiality of the disclosure is subject to the limitations of the law.

7. RIGHTS OF THE ACCUSED

7.1. Does the person accused in a whistleblower's report have to be informed when data concerning him/her is recorded? Please state any time limits.

Section 37 of the Constitution of the Federal Republic of Nigeria 1999 ('the Constitution') protects and guarantees the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication. Section 45(1)(a) of the Constitution, however, provides that any law

may require a breach of the right to privacy if the breach is in the interest of defence, public safety, public order, public morality or public health.

7.2. What information must the person be made aware of? E.g. the entity responsible for the whistleblowing scheme, the actions he is accused of and related facts.

If an employer wishes to take disciplinary action against an employee who is found culpable of wrongdoing upon the conclusion of an investigation, the employee must be clearly informed of the detailed accusation against him/her in the language that he/she understands. The accused must also be informed of his/her rights in relation to the disciplinary proceedings, and the rules of the disciplinary body.

7.3. Does the accused have a right to have his identity remain confidential? I.e. beyond those involved in the investigation.

There is no law that requires that the identity of the accused be kept confidential. It might, however, be in the organisation's interest to keep the accused person's identity limited to a select group within the organisation unless the accused is found guilty.

7.4. Does the accused have a right to access, rectify and erase his data?

In the case of personal data, the Data Protection Regulation allows a data subject to request from the data controller, access to and rectification or erasure of personal data or restriction of processing concerning the data subject.

Section 2.13.8 of the Data Protection Regulation provides that a data subject shall have the right to request the data controller to delete his/her personal data without delay and the controller shall delete personal data where one of the following grounds applies:

- the personal data is no longer necessary in relation to the purpose for which it is collected or processed;
- the data subject withdraws consent on which the processing is based;
- the data subject objects to the processing and there is no overriding legitimate ground for the processing;
- the personal data has been unlawfully processed; and
- the personal data has to be erased for compliance with a legal obligation in Nigeria.

Under Section 2.13.10 of the Data Protection Regulation, the data subject shall have the right to obtain from the controller restriction of processing where one of the following applies:

- the accuracy of the personal data is contested by the data subject for a period enabling the controller to verify the accuracy of the personal data;
- the processing is unlawful, and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
- the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims; and
- the data subject has objected to processing pending the verification whether the legitimate grounds of the controller override those of the data subject.

Where processing has been restricted such personal data shall, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest in Nigeria.

Generally, the above-mentioned rights of the data subject must be in conformity with the constitutionally guaranteed principles of law for the general protection and enforcement of fundamental rights. The data subject will, therefore, not be entitled to access, rectify and erase his personal data where doing so will endanger public safety, public order, public morality, public health or defence.

7.5. What legal recourse is available for the accused?

Where disciplinary proceedings are commenced based on a disclosure, the accused employee is entitled to make representations to the disciplinary body, before the disciplinary body makes a decision affecting the accused employee. Where the employment of the accused is terminated as a result of the disclosure, the accused employee is entitled to seek redress in court. Similarly, where the disclosure results in criminal proceeding, the accused is entitled to defend him or herself.

8. PENALTIES

8.1. Please outline any penalties for failure to notify/unfair dismissal/unlawful detriment

A regulator may sanction a company which fails to disclose material breaches of laws or legal obligations that was brought to its attention. The sanctions may include revoking the licence of the company, fines, removal of the board of the company or the removal of persons to whom the disclo-

party, fines, removal of the board of the company or the removal of persons to whom the disclosure was made, but who failed to notify the regulator.

Failure to comply with the whistleblowing provisions of the CBN Guidelines will attract a fine of NGN 5,000 (approx. €11) for each day during which the failure occurs. Persistent failure to comply with this provision may be a ground for the revocation of the bank/institution's licence.

Section 306(10) of the ISA provides that any capital market operator or public company that subjects an employee to any detriment, by act or failure to act on the grounds that the employee has made disclosure is liable to a penalty not exceeding NGN 5,000,000 (approx. €11,075) in addition to the payment of compensation to the employee.

Section 2.1.5 of the PENCOS Guidelines provides that where an employee is victimised as a result of the disclosure, he makes to PENCOS, then PENCOS shall be obliged to employ appropriate regulatory tools to offer redress to the employee concerned.

8.2. May an organisation face other kinds of liability? E.g. Is there vicarious liability for retaliation by co-workers?

An organisation may be liable if it fails to address the victimisation of a whistleblower by co-workers.

8.3. Please outline any compensation that is available to whistleblowers. E.g. monetary/reinstatement

- Under the CBN Guidelines, where the whistleblower has been subjected to any detriment, he/she may present a complaint to the CBN. This is without prejudice to the right of the whistleblower to take appropriate legal action. An employee who has suffered any detriment by reason of a disclosure shall be entitled to compensation and/or reinstatement provided that in the case of compensation, the employee's entitlement shall be computed as if he had attained the maximum age of retirement or had completed the maximum period of service, in accordance with the condition of his service. For other stakeholders, the whistleblower shall be adequately compensated.
- Section 306(7) of the ISA provides that where the SEC is satisfied that a whistleblower has been subject to detriment, the SEC shall direct the company to reinstate the affected employee or pay compensation within one month of such directive. The compensation shall be calculated as if the employee had attained the maximum age of retirement or had served the maximum period of service, in accordance with his conditions of service. Where the detriment suffered is other than dismissal or termination the

of service. Where the detriment suffered is other than dismissal or termination, the SEC shall direct the company to restore the affected employee to his appropriate position within one month of the directive.

- Under the Federal Ministry of Finance whistleblowing programme, a whistleblower responsible for providing the Federal Government with information that directly leads to the voluntary return of stolen or concealed public funds or assets may be entitled to between 2.5% to 5% of the amount recovered.

ABOUT THE AUTHORS



Ozofu 'Latunde Ogiemudia

Udo Udoma & Belo-Osagie

Ozofu 'Latunde Ogiemudia is a Partner in Udo Udoma & Belo-Osagie, where she is part of the firm's Corporate Advisory, Private Equity and Mergers & Acquisitions teams. She is recognised as an extremely resourceful and versatile adviser and has advised on various areas of the law including, corporate and commercial law, private equity, corporate re-structuring and mergers and acquisitions, regulatory compliance, labour and employment, company secretarial practice. Ozofu is a Vice Chairperson of the Nigerian Bar Association-Section on Business Law Committee on Mergers, Acquisitions and Corporate Restructurings, and was also the head of the technical advisory committee that advised the Nigerian Senate on the Company and Allied Matters Act and the Investments and Securities Act.

Ozofu.ogiemudia@uubo.org



Chukwunedum Orabueze

Udo Udoma & Belo-Osagie

Chukwunedum Orabueze is an Associate at Udo Udoma & Belo-Osagie. Chukwunedum is part of the firm's corporate and commercial team, and advises international and local clients on doing business in Nigeria, mergers, acquisitions, foreign investment, government business, employment and regulatory compliance. Some of Chukwunedum's clients

include private equity firms and companies in the technology, FMCG, insurance, electric power, banking and finance sectors.

chukwunedum.orabueze@uubo.org

cnukwunedum.orabueze@uudo.org

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