

## **Protection of the Whistleblower Act (Cap 527)**

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[Whistleblower - Data Information \(gov.mt\)](http://gov.mt)

### **Background Information**

In September 2013, the Maltese government implemented the Protection of the Whistleblower Act, 2013: an act to make provision for procedures that provide protection to persons who report improper practices and wrongdoings at the workplace, in both the private sector and the public administration.

The Directive – (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law – was adopted on 23 October 2019 and entered into force on 16 December 2019. This has led to the amendment of the Protection of the Whistleblower Act (CAP 527 of the Laws of Malta) which came into force in December 2021.

Anyone who wants to raise the alarm on an act of corruption can do so safely within the Whistleblower Act. By the implementation of this legislation the citizens are given the right to report abuses, knowing they will be protected by law.

### **Internal Reporting**

Reporting persons can report wrongdoings to an internal officer who will refer the report for further follow-up while retaining the identity of the reporting person in strict confidentiality. The reporting person will remain anonymous and therefore protected from retaliation at the workplace.

### **External Reporting**

If no such internal channel is in place, or the report is not investigated effectively, the reporting person may report externally to one of the competent authorities mentioned in the law. These include: the Commissioner for Revenue (CfR), Financial Intelligence Analysis Unit (FIAU), Malta Financial Services Authority (MFSA), Commissioner for Voluntary Organisation (CVO), Permanent Commission Against Corruption and the Ombudsman.

For Public Sector Employees External Whistleblowing Officer has been appointed within the Cabinet Office.

**Public Disclosures** are an added layer of reporting added to the law. A public disclosure refers to a person disclosing information and making it available in the public domain, such as placing it on the internet. This means that the reporting person would be able to forego the initial two stages of reporting in order to make a public disclosure, if: there is a risk of retaliation from External Disclosure; or there is an imminent or manifest danger to the public interest.

Each Government Ministry is represented by a Whistleblowing Reporting Officer (WRO). The WRO is responsible for receiving internal disclosures and addressing the concerns raised by the whistleblower accordingly.

### Who can achieve whistleblower status?

A whistleblower is a person working within the private or public sector who, through a “work-related context”, has acquired information regarding a breach of law and who, in the absence of special rules to protect them, is likely to face retaliation if they report it. This applies to current employees as well as those who have since left their position or who have not yet begun it. This should cover:

1. Employees of any kind, including public officials
2. Self-employed
3. Shareholders and people belonging to the administrative, management or supervisory body, including non-executive members, volunteers and paid/unpaid trainees
4. Any persons working under the supervision and direction of contractors, subcontractors and suppliers.

### Who is a facilitator?

A facilitator is a person who aids the whistleblower in their reporting of a breach or who is connected to the whistleblower and therefore likely to suffer retaliation in a work-related context. This includes third parties connected to the reporting and legal entities connected to the whistleblower in a work-related context.

### Role of the Whistleblowing Reporting Officer or Unit

The WRO is a designated impartial person or department competent for following-up on reports of improper practices or breaches of the law made by whistleblowers (reporting persons). The WRO maintains communication with the whistleblower and, where necessary, asks for further information and provides feedback to the reporting person.

The WRO cannot conduct the investigation as this could lead the WRO to divulge the identity of the whistleblower. Moreover, since the WRO is aware of the identity of the Whistleblower he/she may be prejudiced during the investigation.

Subject to the nature of the wrongdoing, the WRO is to seek advice, even legal advice if so required, and keep the Head of Department/Organisation informed without divulging the identity of the reporting person.

The Whistleblowing Reporting Officer (WRO):

- Receives reports and maintains communication with the reporting person (including requesting additional information);
- Acknowledgement of receipt of the report to the reporting person within seven (7) days of that receipt;
- Provide feedback to the reporting person within a reasonable time, but not longer than three months;
- Makes decision as to the next steps with regards to the reporting of breaches

## Internal Reporting

Entities that fall within the scope of the EU Directive, should establish channels and procedures for internal reporting and follow up monitoring and action. These reporting channels should be managed by the WRO.

- Disclosure will be encouraged to be done through internal reporting channels (if these internal channels will address the breach and there is no fear of retaliation).
- The disclosures can be done verbally or in writing, however, the individual should receive confirmation and acknowledgement that the report has been made and there should be appropriate follow ups.
- The procedures should be designed, established and operated in a secure manner to ensure the confidentiality of the identity of the whistleblower.
- In the case that the reporting person believes that the WRO will not be able to be independent or is involved in the breach, there should be procedures that allow reporting to other individuals within the organisation (example to the Head or Deputy head).
- The internal reporting channels should also create a procedure if the reporting person wants to report a breach to external parties.
- The WRO should ensure that these procedures are published widely within the organisation. (accessible online)

It is important to note that internal reports received by email can only be made through the generic email restricted solely to whistleblower cases. These email accounts shall only be accessed by the WRO and must be monitored regularly. Other generic email accounts (such as customer care domains) shall not be used for whistleblower reporting since this breaches confidentiality.

The Whistleblower Act does not impose that the WRO is to take up the investigation. Indeed, neither should the WRO be expected that he/she leads investigations particularly in view of good governance. The WRO is established to receive internal disclosures and to secure the protection of the Whistleblower. Upon receiving a disclosure, he/she should present information to the higher authority within the organisation to see which steps need to be taken, all the while ensuring not to disclose the identity of the whistleblower. If the wrongdoing comes from the same higher authority, these steps should be moved to external disclosure.

## Internal Reporting: Process Flow

Receive and assess

Investigate or Not investigate

Refer

Acknowledgement of receipt of the report to the reporting person within seven (7) days of that receipt. Provide feedback to the reporting person within a reasonable time, but not longer than three months.

When receiving information from a Whistleblower or making a disclosure yourself, ensure to include the following:

- Complaint is specific as possible
- What wrongdoing are you reporting?
- Where and when (dates and times, if available)?
- Who was involved?
- How the individual(s) committed the act?
- Why you believe the activity is improper?
- Supporting documentation?