

# Whistleblowing as a Means for Compelled Governance in Corporate Institutions

*(Pemberian Maklumat sebagai Kaedah Tadbir Urus Paksaan di Institusi Korporat)*

HAZLINA SHAIK MD NOOR ALAM

## ABSTRACT

*Many critics argue that corporate accountability measures have become corporate public relations tools used to create a positive corporate image. This is because pressures generated by the 'ethical' investor community and other shareholders also contributed to the proliferation of voluntary measures and in today's competitive world, a positive image as a responsible company adds significant value to a company's business along with its reputation and it also helps in managing various risks. This area needs to be carefully treaded on, as it is a minefield filled with potential disasters that could implode with one wrong step. In Malaysia, the debate surrounding whistleblowing as a means to promote corporate accountability rages on. One of the biggest issues that whistleblower protection faced was that it must cover both local and multinational corporations. Whistleblower protection mechanisms should also already be implemented in such companies. The push could be attributed to a variety of reasons, among them being the ever-evolving nature of the world's perception towards whistleblowers.*

*Keywords: Whistleblowing; governance; companies; corporate performance; corporate accountability*

## ABSTRAK

*Ramai pengkritik berpendapat bahawa tindakan akauntabiliti korporat telah menjadi alat perhubungan awam korporat yang digunakan untuk mencipta imej korporat yang positif. Ini kerana tekanan yang dihasilkan oleh komuniti pelabur yang beretika dan pemegang saham lain yang turut menyumbang kepada peningkatan langkah-langkah sukarela dalam membina imej syarikat yang positif. Di dalam dunia kompetitif hari ini, memiliki imej positif sebagai sebuah syarikat yang bertanggungjawab menambah nilai penting kepada perniagaan syarikat serta reputasinya dan ia juga membantu dalam menangani pelbagai risiko yang mungkin timbul. Isu ini perlu dikaji dengan teliti, kerana ia ibarat kawasan lombong penuh dengan bencana yang boleh meletus jika tersilap langkah. Di Malaysia, perdebatan berkisar isu pemberian maklumat sebagai cara mempromosikan akauntabiliti korporat semakin marak. Salah satu isu terbesar yang dihadapi oleh para pemberi maklumat ialah ia mesti meliputi syarikat tempatan dan multinasional. Mekanisme perlindungan pemberi maklumat juga harus segera dilaksanakan di dalam syarikat-syarikat tersebut. Ini boleh dikaitkan kepada pelbagai sebab, di antaranya sifat persepsi dunia yang sentiasa berubah terhadap pemberi maklumat.*

*Kata kunci: Whistleblowing/Pemberian maklumat; tadbir urus; syarikat; prestasi korporat; akauntabiliti korporat*

## INTRODUCTION

To see a wrong and not to expose it is to become a silent partner to its continuance.

Dr. John Raymond Baker<sup>1</sup>

The issue of whistleblowing and corporate governance has been highlighted as of late, following waves of high profile corporate scandals and collapses.<sup>2</sup> In light of the various corporate disasters around the world, more and more emphasis has been made on

whistleblowing and in particular, whistleblowers protection. When there are strong whistleblowers protections in place, whistleblowers will feel more emboldened to make disclosures, and this will inadvertently lead to effective corporate governance. In fact, some studies have shown that there is a widely held view that good corporate governance in companies would eventually lead to good company performance.<sup>3</sup>

Corporate governance is a term that is used to broadly refer to the rules, processes, or laws by which corporations and businesses are operated, regulated, and controlled. Practicing good corporate governance is a major global issue, as it involves companies from all corners of the world. Indeed in recent years, some countries, more than others, have pressed for better corporate governance from their respective companies, and this push came about in the form of both regulatory provisions and legal sanctions.<sup>4</sup>

The issue of corporate governance became particularly significant in the late 20th century and early 21st century with the exposure of several high-profile fiascos. In the wake of sensational corporate collapses, epitomized by Enron, WorldCom and most recently that of BP Petroleum and Satyam, countries such as the United States,<sup>5</sup> United Kingdom, and Australia embarked upon reform programs designed to rectify perceived governance weaknesses in their legal systems.<sup>6</sup> These massive global corporate collapses represent a defining moment in the contemporary corporate governance debate,<sup>7</sup> that good corporate practice must be cultivated in order to prevent future corporate disasters.

Okpara acknowledges that such corporate scandals, involving Enron and WorldCom have exposed failures in corporate governance that shook the foundation of economies within developed countries along with drawing attention to the weak corporate governance in those developing economies.<sup>8</sup> For instance, poor enforcement of corporate laws and regulations, underdeveloped capital markets, a high concentration of corporate ownership and weak competition are the main reasons for weak corporate governance in the countries most affected by the Asian crisis, according to a five-country study conducted by the Asian Development Bank. The ADB's Study of Corporate Governance and Financing in Selected Developing Member Countries includes countries such as Indonesia, Republic of Korea, Malaysia, the Philippines and Thailand and showed that the concentrated corporate ownership structure of Asian companies has given family-based owners and their affiliated companies' excessive power to pursue their own interests to the detriment of minority shareholders, creditors and other stakeholders. It has also reduced the effectiveness of important mechanisms of shareholder protection such as the system of a Board of Directors, shareholder participation through voting, and transparency and disclosure.<sup>9</sup>

The term corporate governance can be derived from an analogy between the governance of cities, nations or states and the governance of corporations.<sup>10</sup> The writer Eells was thought to have first used the term 'corporate governance' to denote the structure and functioning of the corporate policy,<sup>11</sup> while Buccirosi and Spagnolo reiterated this theory, further enforcing that corporate governance directly shapes firms' attitudes and behavior.<sup>12</sup> Monks and Minow offer their definition of corporate governance as, "the relationship among various participants in determining the direction and performance of corporations".<sup>13</sup> This definition encompasses a large group of participants, from the shareholders, management, creditors, and members of the board of directors, right to the customer. Meanwhile, Knights and O'Leary suggest that a more plausible scenario as to why the corporate collapse happened. They are of the opinion that it is the failure of ethical leadership that is derived from the pre-occupation of the self that drives individuals to seek fame, wealth and success,

regardless of moral considerations.<sup>14</sup> Those who are supposed to be responsible for the company ends up destroying the very thing they were tasked to protect.

## CORPORATE GOVERNANCE IN MALAYSIA

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.

Sir Adrian Cadbury<sup>15</sup>

The significance and impact of the ever-changing nature of the financial capital was realized when in June 1997 the currency of South East Asian countries started melting down in countries like Thailand, Indonesia, South Korea and Malaysia.<sup>16</sup> It was realized by the World Bank and all investors that it is not enough to have good corporate management but one should have also good corporate governance because the investors want to be sure that the decisions taken are ultimately in the interest of not only the shareholders, but all stakeholders as well.<sup>17</sup>

To date, there are very few studies on the result of ethical decision making in developing countries, such as in Malaysia.<sup>18</sup> That is a shame, because as Hansmann and Kraakman stated, the point is simply that now, as a consequence of both logic and experience, there is a consensus that the best means to this end, is to make managers strongly accountable to shareholder interests.<sup>19</sup> Honesty in this case would really be the best policy. Good corporate governance provides a structure that could preserve everyone's best interest in the corporation. It has been said that by practicing good corporate governance, companies' worth and value would indeed rise.<sup>20</sup> Writers Abdul Wahab, How, and Verhoeven discovered that good corporate governance will result in higher and better company performance,<sup>21</sup> while Haniffa and Hudaib also found that various corporate governance mechanisms would indeed have effect on company's performance.<sup>22</sup> Despite the recent surge of corporate governance interest worldwide, the idea of good corporate governance in Malaysia is actually not something new.

An important area of corporate governance is the fair treatment and protection rights to all shareholders, with particular focus on rights of minority shareholders. Given that Malaysian companies are generally characterized by dominant controlling shareholders; the protection of minority shareholders right becomes even more critical. Hence, to monitor and protect the rights of minority shareholders and to promote shareholder activism, the High Level Finance Committee in February 1999 in their Report on Corporate Governance to the Ministry of Finance proposed the setup of a Minority Shareholder Watchdog Group (MSWG). In 2001, MSWG was established and funded by five local institutional investors, namely, Employees Provident Fund (EPF), The National Equities Corporation (PNB), The Armed Forces Fund Board (LTAT), Pilgrims Fund Board (Lembaga Urusan Tabung Haji), and Social Security Organization (SOCISO). Some of the main roles of the MSWG are to act as a platform in initiating collective shareholder activism on unethical or questionable practices by management of the public listed companies; monitor for breaches and noncompliance in corporate governance practices by public listed companies; to disclose current corporate governance practices to stakeholders, in addition to develop and provide training, education,

and awareness programs to promote shareholders activism and the benefits of good corporate governance practices.

The reform of company law in Malaysia was largely due to the terrible effect of the South-East Asian financial crisis on the country in 1997. This is because in both corporate and securities transactions, the accelerating development of technology has equally reduced information and money to digital forms, while permitting increasing flows of both over borders.<sup>23</sup> The Malaysian stock market was destabilized due to the financial crisis and plunged to its lowest point. As a result, the Malaysian government decided to review its policies and the legislative framework that was related to company law in order to prevent the reoccurrence of such problem. These features of an insider system of corporate governance have resulted in some innate weaknesses in Malaysia, the most important being the concentration of shareholding, which can lead to poor governance as a small group can exercise control over a corporation and can pursue the objectives of the insiders, at the expense of the outsiders or small shareholders.<sup>24</sup> This can lead to abuses of power, as when enormous power is left at the hands of the few, it can potentially lead to an illusion of non-accountability.

In fact, partly driven by financial scandals among some of its own listed companies, Singapore proposed a shake-up of its own corporate governance code, a move that was welcomed by Malaysia's Minority Shareholder Watchdog Group (MSWG) chief executive officer Rita Benoy Bushon, who said Malaysia should also consider similar moves.<sup>25</sup> This observation comes hot on the heels of the Sime Darby scandal that showcased the failure of corporate governance which shocked and horrified many in the country. When Sime Darby was said to have suffered a loss of RM2.1 billion in 2010, the market was stunned as Sime Darby has been a giant multinational conglomerate involved in five core sectors with a total annual turnover of about RM33 billion. Sime Darby Bhd, which is a government-linked company, is a Malaysia-based multinational and is one of the largest companies on Bursa Malaysia. If even the largest listed company is facing a management problem, we can actually imagine the situation of other government-linked companies (GLCs).<sup>26</sup> It has seriously affected the confidence of investors in the stock market and questioned the supervision of the authorities. There were dubious points in its many projects, including the Maersk Oil Qatar (MOQ) Project which has lost RM526 million and the Bakun hydroelectric dam project which has caused a loss of RM340 million.<sup>27</sup> This is a good example of what can go wrong when there is no accountability.

As a result of the scandal, Sime Darby has since tried to control the damage done. It decided to take civil action against certain individuals found culpable over the severe losses. In a statement to Bursa Malaysia, the conglomerate said the suit was related to its loss-making Qatar Petroleum, Maersk Oil Qatar and marine projects. Sime Darby named Abdul Rahim Ismail, Abdul Kadir Alias, Mohd Zaki Othman and former head of the group's energy and utility division Datuk Mohamad Shukri Baharom as the other defendants in the suit.<sup>28</sup> In fact, Sime Darby Bhd president and group chief Datuk Seri Ahmad Zubir Murshid has been asked to take a leave of absence following concerns about costs overruns from the Bakun dam project.<sup>29</sup>

In 2011, the top management, which is headed by group chief executive and president Datuk Mohamad Bakke Salleh, formerly group managing director at Felda Holdings Bhd, has been house cleaning and busily planning for the future.<sup>30</sup> Bakke, seems to be leading the group to some form of stability<sup>31</sup> after a tumultuous and scandal-plagued 2010.<sup>32</sup> As one previous

director of Sime observed, it is never too late for Sime Darby to do serious business to support, contribute and work within the policies of Prime Minister Datuk Seri Najib Razak and his 1Malaysia Concept for the good of the country as well as the company's shareholders. This can be done, but only if Sime is focused on its responsibilities to the nation along with its shareholders.<sup>33</sup>

In the end, good corporate governance usually equals to better corporate performance, and further strengthens corporate accountability towards their various social obligations. The modern corporation has become more intricate and complex, and successful management is needed to help facilitate good corporate governance.<sup>34</sup> To achieve this, corporations as well as the government need to work together in order to promote good corporate governance and accountability, so as to avoid any further similar scenarios of corporate misconduct that has plagued many a corporation.

## THE FUNDAMENTALS OF WHISTLEBLOWING

John Raymond Baker believed that, “To see a wrong and not to expose it is to become a silent partner to its continuance”. To achieve excellent corporate governance that would result in improved corporate accountability, this is where whistleblowing is needed. The term whistleblower actually originated from Victorian England whereby, when a crime was committed, the policemen, or as they are more commonly known, the ‘bobbies’, would blow the whistle while chasing the criminals to alert the public of the crime.<sup>35</sup> Today, much like these past officers, modern whistleblowers that spot crime would blow the whistle and seek to alert the public.

The term ‘whistleblowing’ is becoming more and more commonplace.<sup>36</sup> On the other hand, despite the various attempts that have been made to promote whistleblowing, and even when whistleblowing is acknowledged to be meritorious, it typically results in victimization of whistleblowers,<sup>37</sup> who are popularly associated with sneaks, spies, squealers and other despised forms of informer.<sup>38</sup> Therefore, judicious usage can help to isolate whistleblowers from other informers, and clarify that legitimate whistleblowing merits encouragement for its social benefits.<sup>39</sup> This distinction is important to ensure that honest whistleblowers would not be penalized when making disclosures.

A whistleblower is “an informant who exposes wrongdoing within an organization in the hope of stopping it”<sup>40</sup>. A whistleblower is also an employee, former employee, or member of an organization, especially a business or government agency, who reports misconduct to people or entities that have the power and presumed willingness to take corrective action. Larmer argues that employees are seen as individuals who act on behalf of their employer, hence why employers and fellow employees see whistleblowing as an act of disloyalty to their company. This perception may cause conflicts between a company and its employees because “employees possess prima facie duties of loyalty to their employers.”<sup>41</sup>

As had previously been acknowledged, corporate governance is the system by which companies are directed and controlled. This is why having good corporate governance, along with dependable directors<sup>42</sup> in a company becomes crucial. While it is important that a board have some directors who are independent and others who are financially literate, having a board that works, and works well, requires a mix of directors with significant expertise and experience and the right dynamics. “It takes a combination of three things to make a board of

directors' work well: expertise, experience and good dynamics. A combination of any two, without the third, increases the risk that the board will fail. By defining the rights and responsibilities of each stakeholder, as well as the accountabilities of each in relation to the other, a well-defined corporate governance system will maximize effectiveness, transparency and proper distribution of interests. All are very important reasons as to why good corporate governance is imperative".<sup>43</sup> This implies that good governance should begin from the top itself.

As Sir Adrian Cadbury so eloquently stated above, corporate governance is the system by which companies are directed and controlled.<sup>44</sup> However, the interests of society, in line with the corporation must also be taken in to account. This may take on many forms, such as the matter of how the resources in a corporation are allocated, as well as how they are used and the impact that it has on the society. The question of accountability on the part of the board of directors will then be very important, as they are responsible for installing, on top of maintaining, appropriate corporate governance and ethical culture within the corporate structure. Quite clearly, corporate governance involves the moral or ethical or value framework under which corporate decisions are taken, corporate managements generally have been concerned with using the physical, financial and human resources available with the management to get the best possible results in the interests of the stake holders and, particularly, shareholders.<sup>45</sup> Another view, as set out by the Australian and New Zealand government, in one of its 1997 CLERP (Corporate Law Economic Reform Program) papers described corporate governance as, "... the term used to describe the rules and practices put in place within a company to manage information and economic incentive problems inherent in the separation of ownership from control in large enterprises. It deals with how, and to what extent, the interest of various agents involved in the company is reconciled and what checks and incentives are put in place to ensure that managers maximize the value of the investment made by shareholders..."

It is quite possible that in the effort at arriving the best possible financial results or business results there could be attempts at doing things which are verging on the illegal or even illegal. There is also the possibility of grey areas where an act is not illegal but considered unethical. These raise moral issues,<sup>46</sup> and as such, this would be the perfect time for whistleblowing to come in to draw the line between what is immoral or illegal. These can come in the form of legislative measures, to further define such boundaries.

## LEGISLATIVE MEASURES IN THE UNITED STATES

Whistleblowers that make disclosures often put their careers and livelihoods at risk, particularly if legislative protection is weak or lacking. When in all good conscience whistleblowers reveal corruption, dishonesty or improper conduct in an organisation, they do us all a service. Often the only way evidence of improper or corrupt conduct can be brought to the attention of proper authorities is by employees 'blowing the whistle.' However, such action can lead to victimisation and protection is needed so that if a person is bullied, demoted and even sacked because they made a genuine and warranted disclosure, then they need processes that allow for investigation, and restitution for damages. People should be encouraged to draw attention to wrongdoing, not punished. They should not have to risk their livelihoods, or endure personal suffering. Fortunately, people of conscience, with high moral regard continued to make disclosures in the public interest, even before there were better disclosure systems or better legal protection.

For instance, the first law that specifically protected whistleblowers was the US False Claims Act 1863 (revised in 1986), which tried to combat fraud from suppliers during the Civil War. The Act encourages whistleblowers to blow the whistle by promising them a percentage of the money recovered as well as damages won by the government in addition to protecting them from wrongful dismissal. This is akin to the qui tam provision that is currently in place in the US.

In 1989, The Whistleblower Protection Act was enacted in the US. It is a federal law that protects federal whistleblowers who work for the government and report agency misconduct. A federal agency violates the Act if agency authorities take or threaten to take retaliatory action against any employee or applicant because of disclosure of information by that employee or applicant. Whistleblowers may file complaints that they reasonably believe shows violation of laws, rules or regulations, abuse of authority or a substantial danger to society. This Act however, has come under criticism for not enforcing whistleblowers protection enough, as in a divisive 2006 case, the US Supreme Court ruled<sup>47</sup> that government employees do not have protection from retaliation by their employers under the Constitution if they inform while in the course of doing their official duties.<sup>48</sup>

Fortunately, in recent times, the US has enacted several notable laws, particularly SOX 2002, the Dodd-Frank 2010 and the most significant and current, the Whistleblower Protection Enhancement Act 2012 which was signed into law by President Obama on November 27, 2012. This 2012 Act injected a much needed shot in the arm for whistleblower protection, enhancing existing protections, rather than introducing new ones. The Act further strengthens anti-retaliation rights given to federal employees under the previous Whistleblower Protection Act 1989. These Acts were all put in place to encourage and protect whistleblowing in a variety of areas, in addition to increasing the role of whistleblowers in promoting good corporate governance and combating corruption.

#### WHISTLEBLOWER PROTECTION ACT 1989 AND WHISTLEBLOWER PROTECTION ENCHANCEMENT ACT 2012

The Whistleblower Protection Enhancement Act (WPEA) 2012 is a fortified extension of the Whistleblower Protection Act (WPA) 1989 that prohibits employers from retaliating against an employee because the employee disclosed evidence of abuse, waste, or the violation of a law, rule, or regulation. Retaliation includes disciplinary actions, transfers and reassignments, performance evaluations, and decisions concerning pay, benefits, or awards.<sup>49</sup> The WPA 1989 was a landmark good government law with the mandate to protect federal employees who report waste, fraud and abuse. In time, the WPA has fallen victim to hostile judicial involvement. Unfortunately, with every month that passed before enactment of the WPEA 2012, the status of federal government whistleblowers continued to erode due to a lack of viable rights. On average each month, more than 15 whistleblowers would lose decisions from administrative hearings at the Merit Systems Protection Board (MSPB), while less than one would prevail. In fact, an MSPB survey found that federal whistleblowers were nine times more likely to be fired in 2010 compared to 1992.<sup>50</sup>

The primary role of the WPA 1989 was the protection of Federal whistleblowers, which led to the creation of the Office of Special Counsel. Sec 2 (b) states;

(b) PURPOSE- The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by--

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

(2) establishing--

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.

While the Act covers most disclosures, exceptions are made with regards to disclosures that could adversely affect national security or foreign affairs.<sup>51</sup> Section 1213 mentions;

Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

(a) This section applies with respect to--

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and...

The WPEA 2012 makes federal whistleblower rights stronger than at any time in history, overlapping those created by WPA 1989. This update is long overdue, as the previous whistleblower protections were very weak. Whistleblower protection is now no longer limited to the first government worker to make a disclosure, as those who subsequently come forward will also receive protection under the new law. Transportation Security Administration employees are also given whistleblower protection<sup>52</sup> while the Act also protects employees who disclose evidence of scientific or technical data that has been censored.<sup>53</sup> A Whistleblower Protection Ombudsmen was also created under WPEA 2012, to further educate the public on better understanding of whistleblower rights.<sup>54</sup> Similarly, the Act also states that employees must be informed that their non-disclosure policies are superseded by their whistleblower and other constitutional rights.<sup>55</sup> Section 101 of the Act is of particular importance as it states;

(2) If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be excluded from subsection (b) (8) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.

An important part of the Act that will have a most significant impact on the whistleblowing landscape would be section 101 of the Act which states that federal employees can now make disclosures in the course of their duties. These changes in the Act will most likely increase the willingness of future whistleblowers to come forward and blow the whistle if they uncover wrongdoing while in the midst of their duties.<sup>56</sup> After SOX 2002 and Dodd-Frank 2010 were conceived, there was an explosion of whistleblower litigations. These cases illustrated the wide range of issues that came under these Acts. Now, with the

advent of WPEA 2012, it is conceived that many more cases will flow upon opening the proverbial whistleblowing floodgates.

In fact, on July 31, 2012 the United States Court of Appeals for the Fifth Circuit, which is incidentally the only court empowered to hear whistleblower case appeals, greatly expanded the types of individuals who can file an FCA complaint. In *Little v Shell Exploration & Production Co*<sup>57</sup>, the court held that “even one whose job is to investigate fraud” has standing to bring an FCA case. Under that standard, auditors, program reviewers and investigators, who are often privy to information that has not been publicly disclosed, could arguably bring claims under the FCA based on that information. The court tempered its ruling somewhat by holding that if a relator was specifically employed to disclose fraud, any disclosures would be non-voluntary, meaning that the federal employee could potentially lack standing under the original source rule. However, with the recent changes to the public disclosure bar, due to the WPEA 2012, this ruling substantially increases the number of individuals who could have standing to bring an FCA suit.<sup>58</sup> This case and others that accede it will provide interesting insights on how these laws would function in years to come.

#### LEGISLATIVE MEASURES IN THE UNITED KINGDOM

While whistleblowing serves a useful and necessary public good function, the plight of whistleblowers generally goes unnoticed. In almost every case, whistleblowers will have to face a choice between keeping loyalty to the employer and the corporation, by keeping silent as to any wrongdoings by the corporation, that affect the public at large or to blow the whistle to protect the public. The main issue would be that any potential whistleblowers would be hard-pressed to make any disclosures of improper conduct and wrongdoing if they know they are not protected. This will leave them vulnerable to future repercussions that they could most likely be faced with.

In the UK, common law has never given workers a general right to disclose information about their employment. Even the revelation of non-confidential material could be regarded as undermining the implied duty of trust and give rise to an action for breach of contract. In relation to confidential information obtained in the course of employment, the common law again provides protection against disclosure through both express and implied terms. The duty of fidelity<sup>59</sup> can be used to prevent disclosures while the employment subsists and restrictive covenants can be used to inhibit the activities of former employees even after the relationship has ceased. Even without post-employment restrictive covenants, ex-employees usually loathe disclose information learned during the course of their employment. Where employees have allegedly disclosed confidential information in breach of an express or implied term they may seek to invoke a public interest defence to a legal action.<sup>60</sup>

In the United Kingdom, there is one such law, which is the UK’s Public Interest Disclosure Act 1998 or PIDA 1998. PIDA 1998 protects employers who have blown the whistle about any corporate wrongdoings. Essentially, PIDA 1998 consists of 18 sections, most of which add new sections to, or amend current sections of, UK’s Employment Rights Act 1996 (ERA). PIDA came into effect on 2 July 1999. The essence of PIDA 1998 goes hand in hand with ERA 1996, and its relevance can be found in Part IVA which was inserted into ERA 1996 regarding protected disclosures.<sup>61</sup>

PIDA 1998 created a framework for whistleblowing across the private, public and voluntary sectors. The Act provides almost every individual in the workplace with protection from victimisation where they raise genuine concerns about malpractice in accordance with the Act's provisions. The most readily available protection under the Act is where a worker, who is concerned about malpractice, raises the issue within the organisation or with the person responsible for the malpractice. The intended effect of this provision is to reassure workers that it is safe and acceptable for them to raise such concerns internally. Employers are therefore encouraged to establish proper procedures for dealing with internal disclosures. The Act also sets out the circumstances where the disclosure of the malpractice outside of the organisation is in the public interest and should be protected.

Subject to limited exceptions, PIDA 1998 protects disclosures for workers under contracts of employment which are employees, including Crown servants, those who work personally for someone else (under a "worker's" contract) but who are not genuinely self-employed, home workers; certain agency workers, National Health Service (NHS) professionals such as general practitioners, certain dentists, pharmacists and opticians and certain categories of trainees. Generally, the only workers who are not protected under the legislation are those who are genuinely self-employed, volunteers, police officers, those ordinarily working outside Britain, as well as those in the armed forces or in security and intelligence services.

In the UK, under the Employment Rights Act (ERA) 1996, section 230 defines what constitutes as employees and workers. Sec 230 of the ERA states;

- (1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
  - (a) a contract of employment, or
  - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

Under section 1 of PIDA 1998, there are provisions for protected disclosures, which were inserted in PART IVA of ERA 1996. Section 43A ERA 1996 defines a 'protected disclosure' as;

...a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

Section 43B ERA 1996 outlines the disclosures that qualify for protection where;

- (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—
  - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
  - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
  - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,  
 (e) that the environment has been, is being or is likely to be damaged, or  
 (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

In order to obtain protection, persons making the disclosure must have reasonable belief that an offence has, or is about to occur. This section also takes into account the danger to public health and safety, as seen by the sections above. Persons making disclosures will also not be protected if they themselves are part of the offence being committed.

Meanwhile, section 43C ERA 1996 covers persons whom the disclosures can be made to, which are primarily employers, s 43D ERA 1996 covers disclosures made to legal advisers. Section 43C ERA 1996 states where;

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith—

(a) to his employer, or

(b) Where the worker reasonably believes that the relevant failure relates solely or mainly to

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

Workers and employees protected by the provisions can complain that they have been subjected to detriment by their employer for making a protected disclosure to the Employment Tribunal. An employee can make a claim of unfair dismissal, while a worker who is not an employee and whose contract has been terminated by his employer because he made a protected disclosure can claim that he has been subjected to a detriment. As with many other claims to employment tribunals, the complaint should normally be made within three months of the dismissal or detriment. However, from 1 October 2004, with the introduction of statutory dismissal, disciplinary and grievance procedures, the time limit will be extended for claims made by employees, in specified circumstances connected with those procedures. The tribunal can also consider a complaint made outside the three-month time limit, either by an employee or by a worker, if they believe it was not reasonably practicable for the employee to have made the complaint within it and that it has been made within such further period as they consider reasonable. For unfair dismissal claims, interim relief is also available, provided the claim is made within seven days of the effective date of the termination of employment. Where a tribunal finds that a complaint of unfair dismissal is justified, it will order reinstatement or re-employment, or payment of compensation. Where an employee complains that he has been subjected to a detriment and the tribunal finds the complaint well-founded,

the tribunal will make a declaration to that effect and might order the payment of compensation.

The above sections would apply where an employee has a reasonable or strong belief that their disclosure would show one or more of the following offences or breaches. They would include criminal offences, breaches of any legal obligation, miscarriages of justice, dangers to the health and safety of any individual, damages to the environment as well as the covering up of any information regarding any of the above.<sup>62</sup> If an employee has the belief that the corporation is involved in any kind of corporate misconduct such as the above, then he would be protected under PIDA if he decides to make a disclosure regarding those wrongdoings. Although it is important to note that these provisions apply to all such information, regardless as to whether or not it is confidential, this certainly does not mean that corporations' trade secrets can be disclosed carelessly and frivolously.

### THE WHISTLEBLOWER PROTECTION ACT 2010

The movement towards greater corporate governance and transparency of late in most developed countries, both in response to the crisis of market failures or compelled by a strong social sense of the need for corporate accountability has set an unprecedented momentum for the enactment of social legislation. Indeed, in the last decade, there has been a significant number of social legislations passed by the Malaysian Parliament, epidemically evident of this global concern. Since the 1960's, there has been tremendous momentum and massive proliferation of legislation in the attempt to ensure that business organisations respond to higher social needs. The range of higher social needs also appear to be expanding, ranging from environmental concerns, biosafety and of late, whistleblowing protection legislation, as goals of socially responsible behaviour that deserve the full protection of the law.<sup>63</sup> A current survey on the countries that have responded actively to legislate for whistleblower protection has shown quite remarkable and variant definitions of a whistleblower.<sup>64</sup> This lack of some semblance of conceptual consensus on the meaning of whistleblowing is the reflection of the mixed social and cultural attitudes towards whistleblowing in these countries.

Essentially, the general trend in most statutory descriptions of whistleblowing centres primarily on the core elements of the conduct, intention, desire and circumstances under which disclosures of improper conduct against a person or organisation is made. Improper conduct, as we can see later, covers a wide dimension of actions or omissions. It is likely to cause harm to the public, breach the code of ethics and widely accepted corporate best practices, as well as including but not exclusively to, corruption.

While drafters are aware of the dangerous rigidity and semantically narrow interpretation of the statutory definitions of whistleblowing, most legislation and scholars prefer a dominant element of public interest as the paradigm for the definition or description of a whistleblower. Some empirical examples will be prudent at this juncture. The fundamental nature of whistleblowing essentially remains the same, which is the act of disclosing information that could potentially pose a threat or harm a person and those around you.

## THE UBIQUITOUS WHISTLEBLOWER

The WPA 2010 defines a whistleblower as ‘any person who makes a disclosure of improper conduct to the enforcement agency under section 6’.<sup>65</sup> Improper conduct, the subject matter of the disclosure, is defined as ‘any conduct which if proved, constitutes a disciplinary offence or a criminal offence’.<sup>66</sup>

Indeed, the nature of the disclosure that triggers the full ambit of the whistleblower protection does not even have to be remotely related to the prevention of corruption or the furtherance of public interest in matters of grave concern to the public. The mention of corruption in the preamble hints that the Act might have been conceived to combat corruption. However, as there are no express provisions that specifically address corruption in the Act, this may be seen as a hurried attempt, to comply with the international obligation to legislate domestic law to protect persons who in good faith disclose facts concerning the commission of corruption under Article 33 of the United Nations Convention against corruption.

The whistleblower under WPA 2010 is a ubiquitous person having the luxury of being called anything. A witness, will he ultimately be, or an informer? As ordinary as alerting a mere breach of code of ethics that does more harm to an organisation than the public or plain poison pen spin doctor who can now find legitimacy for his trade under that definition. Section 7 of WPA 2010 states that;

A whistleblower shall, upon receipt of the disclosure<sup>67</sup> of improper conduct by any enforcement agency under section 6, be conferred with whistleblower protection under this Act as follows:

- (a) protection of confidential information;
- (b) immunity from civil and criminal action; and
- (c) protection against detrimental action.

While WPA 2010 may be lauded for its courage to cover both public and private sector whistleblowing, a rare legislative initiative even by the standards of more advanced jurisdictions, the legacy of the British obsession with secrecy in the public service is not about to be compromised. Several built-in mechanisms to preserve this precious obsession are incorporated in the Act, namely by: (a) limiting the nature of protected disclosure to those not specifically prohibited by any written laws (obviously in the public service there is the Official Secrets Act 1972); (b) prescribing the disclosure pathways, for example through the relevant agency; and (c) allowing that pathways to decide on the merits of the disclosure through the narrow secret alleys of the state administration of justice machinery.<sup>68</sup>

## CONCLUSION

There has been much ado about whistleblowing and whistleblowers of late. With the many corporate scandals making headlines recently around the world, the role of those who expose those corporate failures have never been more important. Whistleblowers are seen as an integral part of preventing such corporate mishaps and in achieving that end many laws have been put in place to protect whistleblowers. Many countries, with the most notable being the US and UK, have legislated strong laws to ensure that whistleblowers are sufficiently protected.

The requirements needed for whistleblowing would not differ by much, as they still have to follow certain ethical and moral guidelines that are set out for corporations. Sometimes the issue of whether good intentions would be sufficient would also arise. Corporations and individuals can be idealistic in their intent, while the consequences of their actions might not be particularly ethical. The first step to doing the right thing, in this case whistleblowing, is always the hardest to take. Whistleblowing is a vessel that encourages disclosures in the right direction. It therefore remains to be seen whether there would be ensuing footsteps following suit.

## NOTES

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- <sup>2</sup> See also Ramly Hj Ali, Corporate Governance in Malaysia for Vision 2020-Issues and Expectation, International Company Secretaries Conference, Kuala Lumpur, (1996).
- <sup>3</sup> Brown, Lawrence D. and Caylor, Marcus L., “Corporate Governance and Firm Performance”, Boston Accounting Research Colloquium, 15th Conference on Financial Economics and Accounting, University of Missouri, and Penn State University, December 7, (2004), p 4.
- <sup>4</sup> See Martynova, Marina & Renneboog, Luc, “A Corporate Governance Index: Convergence and Diversity of National Corporate Governance Regulations”, for a discussion on the corporate governance regulatory provisions in the UK & US, <http://www.aeaweb.org/assa/2009/index.php>, (accessed on 17/4/2017).
- <sup>5</sup> In response to the Enron disaster, the US government passed the SOX 2002, which was the legislative response aimed to address corporate disclosures and financial information. See Engel, Ellen, Hayes, Rachel M. & Wang, Xue, “The Sarbanes-Oxley Act and Firms’ Going-Private Decisions”, (May 6, 2004), p. 2, <http://ssrn.com/abstract=546626> or doi:10.2139/ssrn.546626, (accessed on 4/5/2017).
- <sup>6</sup> Basically these reforms aim to achieve good corporate governance in terms of best serving stakeholders by solving conflict of interest issues, mitigating the usage of creative accounting principles and implementing the principles of corporate governance. See Nguyen, Huo Cuong, “Enron Fiasco: Business Difficulty and the Role of Enron Directors”, (March 20, 2011), pp. 5-6, <http://ssrn.com/abstract=1788978>, (accessed on 4/5/2016).
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- <sup>8</sup> Okpara, John, O., “Corporate Governance in a Developing Economy: Barriers, Issues and Implications for Firms”, *Corporate Governance*, Vol 11, No 2, (2011), p 184.
- <sup>9</sup> “Concentrated Ownership a Cause for Weak Governance in Asia, Says ADB Report”, News Release, No 114/99, 18 November 1999, <http://www.adb.org/Documents/News/1999/nr1999114.asp>, (accessed on 4/5/2017).
- <sup>10</sup> The parallel between corporate and social governance was explicitly found in early corporate writings, dating back to the revolutionary origins of the American corporation. See generally Dunlavy, C.A., “Corporate Governance in late 19th Century Europe and the U.S.: The Case of Shareholder Voting Rights”, in: K.J. Hopt, H. Kanda, M.J. Roe, E. Wymeersch and S. Prigge, eds., *Comparative Corporate Governance. The State of the Art and Emerging Research*, Oxford, Oxford University Press, (1998), pp.5-40.
- <sup>11</sup> Eells, R.S.F., “The Meaning of Modern Business: An Introduction to the Philosophy of Large Corporate Enterprise”, Columbia University Press, NY, (1960), p 108.
- <sup>12</sup> Buccirosi, Paolo & Spagnolo, Giancarlo, “Corporate Governance and Collusive Behavior”, Chapter XX, (2007), p 1, <http://www.gianca.org/PapersHomepage/Buccirosi%20Spagnolo%20-%20Corporate%20Governance.pdf>, (accessed on 4/7/2017).
- <sup>13</sup> Monks, R. & Minow, N., *Corporate Governance*, 1<sup>st</sup> Ed, 1995, <http://www.corpgov.net/library/definitions.html>, (11/2/2016).
- <sup>14</sup> Knights, D. & O’Leary, M., “Leadership, Ethics and Responsibility to the Other”, *Journal of Business Ethics*, Vol 67, pp. 125-137.
- <sup>15</sup> Sir Adrian Cadbury, United Kingdom, Commission Report: Corporate Governance, (1992).
- <sup>16</sup> “Concentrated Ownership a Cause for Weak Governance in Asia, Says ADB Report”, News Release, No 114/99, 18 November 1999, <http://www.adb.org/Documents/News/1999/nr1999114.asp>, (accessed on 4/5/2017).

- <sup>17</sup> Numerous parties have been identified as stakeholders in democratic governance. These include individual citizens and groups such as political parties, trade unions, lobby groups, the media and corporations, Omoteso, Kamil, “Multinational Corporations, Governments and Corporate Governance: Charting A New Course”, *Developments in Corporate Governance and Responsibility*, Vol 2, p. 60.
- <sup>18</sup> Abdullah, Amalina, et. al., “Ethical Control Practices: The Effect of Managerial Ethical Dimensions and Corporate Ethical Culture”, *International Conference on Corporate Governance and Corporate Accountability*, (2010), p. 376.
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- <sup>21</sup> Abdul Wahab, E. A., How, J., & Verhoeven, P., “The Impact of the Malaysian Code on Corporate Governance: Compliance, Institutional Investors and Stock Performance”, *Journal of Contemporary Accounting & Economics*, (2007), Vol 3, pp. 106–129.
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- <sup>23</sup> McGregor-Lowndes, Myles, “Corporate Disclosure, the Internet and the Australian Securities Commission”, *Company and Securities Law Journal*, (1996), pp. 219 & 229. See also Jeanes, M., “Lawyers Warn of Dangers in Internet Prospectuses”, *Australian Financial Review*, (3 February 1997), p. 4.
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- <sup>29</sup> Chieh, Yow, Hong, “Sime Darby Head Told to Step Aside”, *Malaysia Today*, (13 May 2010), [http://malaysia-today.net/index.php?option=com\\_content&view=article&id=31822:sime-darby-bhd-president-and-group-chief-datuk-seri-ahmad-zubir-murshid-has-been-asked-to-take-a-leave-of-absence-following-concerns-about-costs-overruns-from-the-bakun-dam-project&catid=19:newscommentaries&Itemid=100131](http://malaysia-today.net/index.php?option=com_content&view=article&id=31822:sime-darby-bhd-president-and-group-chief-datuk-seri-ahmad-zubir-murshid-has-been-asked-to-take-a-leave-of-absence-following-concerns-about-costs-overruns-from-the-bakun-dam-project&catid=19:newscommentaries&Itemid=100131), (accessed on 27/4/2017).
- <sup>30</sup> ‘Government-linked companies have not only been performing well locally, they have expanded their footprint beyond Malaysia’s shores, said Prime Minister Datuk Seri Najib Tun Razak’, Aruna, P. & Lai, Isabelle, “PM Hails Success of GLC’s”, *The Star/Asia News Network*, (25 June 2011), <http://news.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20110625-285874.html>, (accessed on 27/4/2017).
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- <sup>34</sup> See also generally Koh, Philip T.N., *Principles, Practice and Prospects of Corporate Governance: The Malaysian Legal Framework in International Company and Commercial Law Review*, 9(10), (1998), pp. 291-299.
- <sup>35</sup> Berk, Steven, “Whistleblowers-From Victorian England to Dodd Frank”, 4/3/2011, <http://www.thecorporateobserver.com/2011/03/articles/consumer-protection/whistleblowers-from-victorian-england-to-dodd-frank/>, (accessed on 10/4/2017).

- <sup>36</sup> However, proper understanding as to what would constitute as whistleblowing is still needed. King, Granville, “The Implications of An Organization’s Culture on Whistleblowing”, *Jurnal of Business ethics*, Volume 20, No 4, (1999), p. 325.
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- <sup>38</sup> In Australia particularly, the ‘mateship’ culture was initially antagonistic towards whistleblowers. See Schroder, P., “Whistleblowers Just ‘Dobbers’, Ethics Forum Hears”, *The Canberra Times*, (9 August 1996).
- <sup>39</sup> Jubb, Peter, B., “Whistleblowing: A Restrictive Definition and Interpretation”, *Journal of Business Ethics*, Vol 1, Number 1, (1999), p. 77.
- <sup>40</sup> <http://wordnetweb.princeton.edu/perl/webwn?s=whistleblower>, (accessed on 10/4/2017)
- <sup>41</sup> Larmer, R.A., “Whistle-Blowing and Employee Loyalty”, *Journal of Business Ethics*, Vol 11, (1992), p. 125.
- <sup>42</sup> Directors have an obligation to perform their duties with the care that a person in a like position would reasonably exercise under similar circumstances. Baynes, L. M., “Just Pucker and Blow? An Analysis of Corporate Whistleblowers, the Duty of Care, the Duty of Loyalty, and the Sarbanes–Oxley Act”, *St John’s Law Review*, Vol 76, (2002), p. 886.
- <sup>43</sup> Cantor, Paul, Board Performance: A Three-Legged Stool, *Ivey Business Journal*, 2004, [http://www.iveybusinessjournal.com/view\\_article.asp?intArticle\\_ID=588](http://www.iveybusinessjournal.com/view_article.asp?intArticle_ID=588), (19/2/2017).
- <sup>44</sup> Sir Adrian Cadbury, The Committee on the Financial Aspects of Corporate Governance, <http://www.corpgov.net/library/definitions.html>, (15/2/2017).
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- <sup>46</sup> Vittal, N., Ethical Issues in Corporate Governance, Inaugural Address delivered at NBCC Seminar, 2000, <http://www.cvc.nic.in/vscvc/cvcspeeches/march2k5.html>, (16/2/2017).
- <sup>47</sup> See *Garcetti v Ceballos* 547 U.S. 410 [2006] where the plaintiff was a district attorney who claimed that he had been ignored a promotion for criticizing the legitimacy of a warrant. The Supreme Court ruled that because his statements were made pursuant to his position as a public officer, rather than as a private citizen, he had no protection.
- <sup>48</sup> However, s 101 of the Whistleblower Protection Enhancement Act 2012 amends federal personnel law relating to whistleblower protections to provide that such protections shall apply to a disclosure of any violation of law, except for an alleged violation that occurs during the conscientious carrying out of official duties. US Congress, Whistleblower Protection Enhancement Act of 2010, 22 December 2010, <https://www.congress.gov/bill/111th-congress/senate-bill/00372> (1 March 2013).
- <sup>49</sup> See Whistleblower Protection Enhancement Act 2012, sec 101-104.
- <sup>50</sup> The U.S. Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board was established by the Civil Service Reform Act of 1978 (CSRA) and its mission were to protect Federal merit systems and the rights of individuals within those systems. See US Merit Systems and Protection Board. *Blowing The Whistle: Barriers to Federal Employees Making Disclosures* (No. G-113), Washington, DC, November 2011, <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=662503&version=664475&application=ACROB> AT (20 September 2013).
- <sup>51</sup> In this respect, it seems similar to Malaysia’s Official Secrets Act 1972. OSA 1972 also states documents concerning national security, defense and international relations are considered classified.
- <sup>52</sup> Whistleblower Protection Enhancement Act 2012, sec 109.
- <sup>53</sup> Whistleblower Protection Enhancement Act 2012, sec 110.
- <sup>54</sup> Whistleblower Protection Enhancement Act 2012, sec 117.
- <sup>55</sup> Whistleblower Protection Enhancement Act 2012, sec 115.
- <sup>56</sup> See *Garcetti v Ceballos*, 547 U.S. 410 (2006).
- <sup>57</sup> 690 F.3d 282 (5th Cir. 2012).
- <sup>58</sup> G. Dunn & L.L.P. Crutcher, ‘Recent developments in false claims act cases show mixed results’, *Lexology*, 12 November 2012, <http://www.lexology.com/library/detail.aspx?g=cc7ef4d6-c357-4437-ae5-2af33a5667ee> (1 March 2013).
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- <sup>60</sup> D. Lewis & S. Trygstad, ‘Protecting whistleblowers in Norway and the UK: a case of mix and match?’, p 376.

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- <sup>61</sup> See UK Acts of Parliament, Public Interest Disclosure Act 1988, s 1.
- <sup>62</sup> Sec 43(B) ERA 1996.
- <sup>63</sup> C.R. Greer & H.K. Downey, 'Industrial compliance with social legislation: investigations of decisions rationales' (1982) 7 (3) *Academy of Management Review*, p 488.
- <sup>64</sup> Note there is no single statutory definition of a whistleblower which defines his attributes or the mere nature of his act except by reference to the public interest dimension of that Act. See H. Park, et al, 'Cultural orientation and attitudes toward different forms of whistleblowing: a comparison of South Korea, Turkey and the UK' (2008) 82 (4) *Journal of Business Ethics*, pp 929-939. In the Report of the Committee on Legal Affairs and Human Rights of Parliamentary Assembly of the council of Europe 2009, one of the elements emphasised in the adoption of the legislation to protect whistleblowers is the public interest dimension of the disclosure.
- <sup>65</sup> Sec 2 WPA 2010.
- <sup>66</sup> Sec 2 WPA 2010.
- <sup>67</sup> See also s 7(3) of the same Act.
- <sup>68</sup> As well as the 'disclosure principally involves questioning the merits of government policy, including policy of a public body': s 11(1)(d) of the 2010 Act. 'The epitome of official British concealment is of course the Official Secrets Act 1911 which was rushed into the statute book in a single day in 1911' and subsequently exported to other British colonies and protectorates including Malaysia. D.M. William, 'The Victorian whistleblower protection act patting the paws of corruption?' in paper presented at *Staff Seminar*, Department of Business Law and Taxation, Monash University, 2002.

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Dr. Hazlina Shaik Md Noor Alam  
Faculty of Law  
Universiti Kebangsaan Malaysia  
43600 UKM Bangi  
Selangor  
Email: [hazlinashaik@ukm.edu.my](mailto:hazlinashaik@ukm.edu.my)

