

Development of a Crafted Malaysian Whistleblowing Policy Disclosure Index

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ABSTRACT

Though there are legislative provisions to protect whistleblowers, there is still no specific legislation that mandates the implementation of a standardized whistleblowing disclosure among Malaysian companies. This has led to inconsistency of whistleblowing disclosure level among local companies (Ahmad et al., 2018). This study proposes the development of Whistleblowing Policy Disclosure Index (WPDI) specifically for the Malaysian listed companies that could reflect a “best practice” model for establishing sound and comprehensive contents of whistleblowing policy disclosure. Specifically, the whistleblowing disclosure index would be developed by using the guidelines issued by the MCGG (2017), OECD (2011), and the Standards Australia (2003). These three guidelines could pave the way for the development of effective and comprehensive disclosure of corporate whistleblowing policy mainly for local scene. Hopefully, this would then assist regulators to provide effective mechanisms to promote whistleblowing as well as possibly mandates the compulsory implementation of a standardised internal whistleblowing procedure in Malaysian companies to ensure greater accountability and transparency to investors.

Keywords: Corporate governance, Disclosure index, Narratives, Whistleblowing policy

INTRODUCTION

Research assessing individuals' whistleblowing intentions has risen predominantly in recent years. The studies examined various factors that instigate on individuals' whistleblowing intentions (e.g., Ahmad et al., 2014; Alleyne et al., 2019; Brennan & Brennan, 2020; Valentine & Godkin, 2019). The spectrum of this research has now expanded to the study of companies' whistleblowing policy disclosure. This new area examines the contents and disclosure adequacy of companies' whistleblowing policy for ensuring effective implementation of corporate governance practices. Having an appropriate internal control mechanisms through adequate whistleblowing policy disclosure would provide a positive signal to stakeholders that such company is safeguarding their concerns and interest (Barnett et al., 1993; Rachagan & Kuppusamy, 2013). As the matter of fact, studies on voluntary disclosure and financial reporting provided evidence that companies with certain characteristics of good corporate governance attributes disclose more voluntary information than their counterparts (Chi et al., 2020; Lu & Wang, 2021). As such, it is expected that companies which possess good corporate governance practices will have higher tendencies to disclosure adequate whistleblowing policy contents (Lee & Fargher, 2013).

Lewis (2006) conducted a comprehensive analysis on the details of whistleblowing policy among companies in the United Kingdom. The study revealed that various users could use the whistleblowing policies in many forms ranging with concerns for malpractices, fraud, health and safety issues, harassment, discrimination, bullying, and financial irregularities. A study by Agnihotri and Bhattacharya (2015) investigated the reasons India, being an emerging market, differ in their companies' whistleblowing policy disclosure practices. They found that the proportion of independent directors and appointment of special officers significantly influence Indian firms' disclosure of whistleblowing policies. While another recent study in Indonesia concurs that having an effective and systematic internal whistleblowing system is important to uphold good governance and integrity measures among public institutions in Indonesia (Nurhidayat & Kusumasari, 2018).

This new field of study is beginning to gain more interest in the local front evidently by the work of Ahmad et al. (2018), Al-absy et al. (2019), and Mohd et al. (2019). Nevertheless, these studies acknowledged that Malaysian companies do not have a standardized whistleblowing disclosure. Al-absy et al. (2019) study merely identify whether Malaysian companies presented their whistleblowing policy via a box-ticking method and did not actually examine the content disclosure of whistleblowing policies. Their study then applied logic regression analysis to seek relationship between certain corporate governance attributes and the availability of whistleblowing policies. An earlier study by Ahmad et al. (2018) investigated the level of whistleblowing policy disclosure utilizing the Standard Australia (2003) checklist among the top 50 Malaysian public listed companies. The reason was simply to determine the current extent of disclosure made by these Malaysian companies. Mohd et al. (2019) study on the other hand, examine the effects of whistleblowing policy disclosure on the cost of equity among selected five Asian public listed companies. Interestingly they examined the disclosure of whistleblowing policies utilising an index developed based on Asian-CG scorecard instead.

Based on the recent outcomes, it is evident that there is no specific benchmark available for Malaysian companies to guide and promotes appropriate disclosure of whistleblowing policy. Consequently, many public listed companies do not provide disclosure of their whistleblowing

policy and for those who make such disclosures, their disclosure contents vary (Ahmad et al., 2018). Inconsistency of disclosure may then reflect inconsistency for adopting whistleblowing sound policy in the companies. As such, the study proposes the development of Whistleblowing Policy Disclosure Index (WPDl) specifically for the Malaysian listed companies. Such approach could be regarded as a “best practice” model for establishing sound and comprehensive contents of whistleblowing policy disclosure.

LITERATURE REVIEW

The State of Whistleblowing Legislations and Disclosure Requirements in Malaysia

In Malaysia, the protection for a whistleblower is covered under the provisions of the Malaysian Anti-Corruption Commission Act (2009), Capital Markets and Services Act (2010), Witness Protection Act (2008) as well as the Whistleblowing Protection Act (2010) (Rachagan & Kuppusamy, 2013). Despite having these legislations, protection to the would-be whistleblower is limited, where the whistleblower will only be protected should the person fits into certain condition as stipulated by the acts (The Star, 2012). Furthermore, none of these legislations mandated Malaysian companies to disclose whistleblowing policy. Consequently, some companies do not provide such disclosure while, for those who do, their disclosure contents vary among them. As such, a standardized and adequate disclosure of whistleblowing policy is warranted to ensure effective implementation of internal control mechanisms within the organization.

The latest edition of Malaysian Code on Corporate Governance (MCCG) in 2021 spelt out the board of directors' responsibilities to promote desirable conduct of business and maintain a strong corporate culture that incorporates integrity, transparency, and justice. The regulation also requires the board to establish a Code of Conduct and Ethics for the company, including the setting up, review, and implementation of whistleblowing policy (Securities Commission of Malaysia, 2021). Additionally, the board is also required to guarantee that their whistleblowing policies enable genuine concerns to be treated and investigated objectively. It paves the way for individuals to report in confidence about unlawful, immoral, or dubious practices without the risk of retaliation. Given the developments in the corporate landscape, the general duties, and responsibilities of the board of directors in encouraging whistleblowing have evolved significantly over the years, along with periodic revisions of the MCCG.

Furthermore, the Minority Shareholders Watchdog Group (MSWG) released their annual extensive assessments into the corporate governance disclosures and practices of Malaysian-listed companies. Their recent report indicated that more companies have disclosed their whistleblowing policy with an increased to 94% in 2018 as compared to 84% in 2017 (Minority Shareholder Watchdog Group, 2018). This is considered as a significant improvement in terms of participation of Malaysian companies to provide their whistleblowing policy to the public. The MSWG findings however indicated that, the implementation of whistleblowing policy by Malaysian listed firms is purely voluntarily and there are still companies who have not putting the whistleblowing disclosure as their main concern. The biggest concern is whether the presence of such disclosure is merely a symbolic in nature without reassuring the effectiveness and the adequacy of its contents.

The Needs for Effective Internal Whistleblowing Policy

Whistleblowing is essential a mechanism to regulate, monitor and to protect organizations against corruption and fraud (Said et al., 2018). Meng and Fook (2011) highlighted four advantages for companies for having internal whistleblowing policy. First, it enables the company to prevent fraud at an early stage. Secondly, the policy may signal to investors that the company are committed in mitigating malpractices and fraud to ensure effective corporate governance system. Third, the whistleblowers are guaranteed of their safety and this would encourage them to report internally. Finally, the whistleblowing policy signifies the importance of protecting the public interest as any fraud or misconduct is detected at early stage.

Empirical studies showed that companies that provide ethical codes give favourable effects in handling fraud. Companies that have ethical codes in place showed an increased in the number of wrongdoing reports from employees (Barnett et al., 1993), experienced fewer cases of wrongdoing (Somers & Somers, 2001) and employees in companies that adopted ethical codes were perceived as more ethical than those companies without such codes (Adams et al., 2001). This may suggest that companies that implement a quality whistleblowing policy affect the ethical and reporting behaviour among their employees. Nevertheless, to assure an effective implementation of the system is to make it transparent to the employees. The company must disclose detail procedure of the whistleblowing policy to assure that the whistleblower rights are protected and the report is channelled to the right person for immediate action. Despite having the necessary internal control mechanisms, some studies argued companies may simply regard it as a symbolic side of ethics management where the policies may not actually put into practice (Hassink et al., 2007; Weaver et al., 1999).

Sources for the Development of Malaysian Whistleblowing Policy Disclosure Index (WPDI)

Malaysian Code of Corporate Governance 2021 (MCCG 2021):

The Malaysian Code of Corporate Governance 2021 (MCCG 2021) guidelines issued by Bursa Malaysia emphasizes the importance of whistleblowing policy in Malaysian public listed companies in which it is to encourage employees to raise any concern on fraud or dysfunctional behavior within their organization. The MCCG reflects global principles and internationally recognised practices of corporate governance which are above and beyond the minimum required by statute, regulations or those prescribed by Bursa Malaysia (Securities Commission of Malaysia, 2021). Specifically, the MCCG stated that whistleblowing policy is an anti-fraud measures in which the firms take an initiative to implement an internal system to protect the whistleblower. The guideline highlighted that Malaysian companies need to instill a culture that is receptive to bad news and encourage their employees to willingly report any forms of discrepancies.

Despite the absence of a standardize measure of what could be constituted as an appropriate whistleblowing policy, the MCCG (2021) provided these three areas that could be reflected by Board of directors in incorporating a formal ethical code of conduct to facilitate internal mechanisms for whistleblowing. The three general areas are:

Practice 3.2 of the guideline (page 24) stated that *“the board establishes, reviews and together with the management implements policies and procedures on whistleblowing”*

Guidance G3.2 (page 25) stated that, “*The board should ensure that its whistleblowing policies set out avenues where legitimate concerns can be objectively investigated and addressed. Individuals should be able to raise concerns about illegal, unethical or questionable practices in confidence and without the risk of reprisal*”.

Guidance G11.1 (page 53) stated that, “*An internal audit function helps a company to accomplish its goals by bringing an objective and disciplined approach to evaluate and improve the effectiveness of risk management, internal control, anti-corruption, whistle-blowing and governance processes*”. Note: This is an updated statement as at 28 April 2021 in the MCCG 2021.

OECD G20 Anti-Corruption Action Plan (OECD, 2011):

In November 2010, G20 Leaders identified that protection of whistleblowers is important in the pursuit of global anti-corruption agenda. Hence, its Working Group in charge of carrying out the Anti-Corruption Action Plan had assigned the OECD the task to prepare a blue print on best practices and guidelines for legislation on the protection of whistleblowers. The consensus among the G20 Leaders is that, these G-20 countries will enact and implement whistleblower protection rules by the end of 2012, which would be built upon the existing work of OECD and the World Bank. They will also study and summarise existing whistleblower protection legislation and enforcement mechanisms, and propose best practices on whistleblower protection legislation (OECD, 2011). G20 members acknowledged that their private sector is increasingly taking voluntary measures to create internal channels for safely and confidentially reporting misconduct for whistleblowers’ protections purposes. The summary of its whistleblowers reporting and protection mechanism are summarised below (OECD, 2011, pp. 28–29):

Paragraph 74. “An informal survey of companies from G20 countries that have volunteered to work on anti-corruption issues within the G20 context¹⁷⁷ (referred to as B20 companies) shows that whistleblower reporting mechanisms and protections—where provided—are, in many cases, clearly articulated as part of companies’ internal controls, ethics and compliance programmes”.

Paragraph 75. “Whistleblower provisions in the B20 companies generally reflect the provisions set out in the business principles mentioned in paragraph 74 above, in that they provide internal and where possible confidential reporting to staff and, where appropriate, business partners, who seek guidance and advice or to report misconduct”.

Paragraph 76. Provisions also include protection from retaliation or discrimination. For example, the United States’ GE states retaliation for reporting misconduct as ‘grounds for discipline up to and including dismissal. Some B20 companies also outline what actions management should take to respond to whistleblower reports. Efforts are also made to raise awareness of, and to provide training on, internal controls, ethics and compliance provisions, including with regard to whistleblowing.

Standards Australia (2003) Whistleblowing Checklist:

The Australian Standard on whistleblowing policy, is a standard for the implementation and handling of whistleblowing schemes by private sector organizations. The standard recommends developing an internal whistleblowing system that complements the Australian

companies' code of ethics. The objective of this Standard is to provide the modes for establishing, implementing, and managing an effective whistleblowing standard for whistleblower protection in Australia. It is a clearly developed standard that provide a list of recommended checklists for sound whistleblowing disclosures.

Table 1: Checklist on whistleblowing disclosure by Standards Australia (2003)

1.	A statement of the entity's commitment to culture of high corporate compliance and ethical behavior
2.	Commitment to regularly review the policy
3.	Provision of training
4.	Scope applies to employees (including contractors and consultants)
5.	Scope applies to non-employees (customers, general public)
6.	Guidelines on reportable issues
7.	Guidelines on who to report to
8.	Guidelines on how to report
9.	A statement that report will be treated as confidential
10.	A statement that different individuals will receive and investigate the report
11.	A statement on how the report will be handled
12.	A statement on whether whistle-blower will be notified on commencement of investigation
13.	A statement on whether whistle-blower will be notified on whistle-blowing progress
14.	A guarantee that whistle-blowers will receive feedback
15.	Appointment of a welfare/whistle-blowing protection officer
16.	No retaliation by company, if report made in good faith
17.	A statement that protection is given
18.	Description of the specific protection given from and the actions that will be taken - Definition of term - List out different forms of misconduct - Who is handling the matter? - Action subsequent to report (upon investigation)

METHODOLOGY

Crafting the Malaysian Whistleblowing Policy Disclosure Index (WPDI)

Due to the obvious omission of a Malaysian own whistleblowing policy disclosure, the study proposes the development of a self-constructed Malaysian Whistleblowing Policy Disclosure Index (WPDI). The crafted index is based on three sources - by using the guidelines issued by the MCCG (2017), OECD (2011), and the Standards Australia (2003). The process to craft the WPDI will be carried out in four stages.

In The First Stage:

A content analysis approach will be applied on each three sources of guidelines to identify the suitable disclosure items for whistleblowing policies among Malaysian firms.

During Second Stage:

the categories and items for the index will be identify and selected. This involved selecting the initial items for the index, categorizing these items and, finally modifying the index where necessary.

During Third Stage:

Once the initial WPDI checklist has been created, it will be validated with the help expertise appointed from regulatory agency either from Institute of Internal Auditors of Malaysia or Malaysian Institute of Accountants, to assist in refining the checklist to ensure its validity.

Finally, In Stage Four:

A scoring sheet for each whistleblowing policy disclosure will be made available based on the checklist. Disclosures will be sourced from the corporate websites of the companies and their corporate governance statements in annual reports. For each disclosure item, the existence of the disclosure will be coded '1' if present and '0' otherwise.

Scoring Approach for Malaysian Whistleblowing Policy Disclosure Index (WPDI)

Depending on the final number of the WPDI checklist, the scores for each item will be added to derive the final score for each company and the WPDI will be calculated as the ratio of total items disclosed divided by the maximum possible score. This is the most common approach for disclosure checklist as examined by other studies in voluntary disclosures and whistleblowing policy disclosure (see Agnihotri & Bhattacharya, 2015; Kamal Hassan, 2012; Lee & Fargher, 2013). The checklist will apply to each company to determine the extent of their whistleblowing disclosures level. Company that has greater extent of disclosure indicates that it has sound whistleblowing system in place.

CONCLUSION

As Malaysia is striving toward achieving higher standard of corporate governance practices, disclosing sound whistleblowing policy should be viewed as a tool to further enhance corporate governance practices among Malaysian corporations. The outsiders will view the organization as an entity that are transparent and have proper procedure in place to rectify and mitigate possible malpractices and incidence of fraud. Studies acknowledged that organizations prefer to see whistleblowing protection through internal channels (Culiberg & Mihelič, 2016; Gao & Brink, 2017) so that wrongdoings can be rectified internally rather than be made public. This would mean that organizations need to build up a culture to encourage their employees to report internally any forms of corporate wrongdoing. As such, a sound and adequate disclosure of whistleblowing policy tailored for Malaysian companies must be made available.

Unfortunately, legislations in Malaysia do not impose a mandatory requirement for organizations to have a standardize internal whistleblowing policy. This has resulted to Malaysian companies of not having a standardized checklist for disclosure of policies on whistleblowing (Ahmad et al., 2018). Having a comprehensive checklist specifically tailored for Malaysian companies could encourage and act as a guidance for companies to strengthen their whistleblowing policy. As such, the study proposes the development of a self-constructed Whistleblowing Policy Disclosure Index (WPDI) specifically for the Malaysian listed companies.

It is hopeful that the outcomes of this WPDI would initiate the relevant policymakers and practitioners a “best practice” model for establishing sound and comprehensive of whistleblowing policy disclosure to be recommended specifically to Malaysian companies. Finally, the current study could provide additional literature to the limited source of Malaysian whistleblowing policy studies.

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