

Joint Forensics Forum and PAIB seminar –

Whistle-blowing:
the law, policies
and procedures
and how to deal
with them

23 August 2012

- The objective of this seminar is to help business accountants & company management better understand the key features of a whistle-blowing policy, including how to implement such a policy and make it effective.

Agenda

- Whistle-blowing RPB in different jurisdictions
- Hong Kong legal framework vs. other jurisdictions re: support and protections available to whistle-blowers
- relevant toolkits/ guidance factors for the design and development of a whistle-blowing policy and system
- practical implementation issues – do's and don'ts
- Examples/cases on how to deal with complaints and reports

Chairperson:
Ms. Susanna Chiu

- Vice-President of HKICPA and Chair of PAIB Leadership Panel

Speaker:
Mr. C.K.Cho

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DISCLAIMER

- *Not a substitute for legal advice*
- *For educational purposes only*

Standard
Chartered



Vs.



DEPARTMENT *of*
FINANCIAL SERVICES

Money Laundering



Extract from
an ORDER
PURSUANT
TO BANKING
LAW § 39
Issued by
Department
of Financial
Services

- “8. Lest there be any doubt, SCB’s obvious contempt for U.S. banking regulations was succinctly and unambiguously communicated by SCB’s Group Executive Director.
- As quoted by an SCB New York branch officer, the Group Director caustically replied: “You f---ing Americans. Who are you to tell us, the rest of the world, that we’re not going to deal with Iranians.”
- Note 6: Note of Interview with SCB’s Head of Cash Management Services (2002–2005), Head of Compliance (2005–2007) at the New York branch, SCB INT 0004733–4734.

Who do you think is the Whistle-blower
in the Standard Chartered Bank Case?

We do not know yet.

One thing we do know now

Kyle Lagow is the Whistle-blower in



Countrywide

- ▶ Lagow had filed a suit against his former employer, subprime mortgage lender Countrywide Financial, alleging appraisal fraud.
- ▶ Lagow's portion of the pact was worth \$75 million. In May, he received his cut -- 19 percent of the total. Taxes and legal fees come out of the \$14.5 million.
- ▶ His reward was one of the larger ones among recent finance related whistle-blower cases.

- ▶ The settlement has brought Lagow financial security and a measure of redemption. But it was a long, hard path.
- ▶ Even after his travails, he fears little has changed in the mortgage industry.

- ▶ Source: Reuters
- ▶ (Editing by Dan Wilchins and Leslie Adler)

FACT SHEET
Establishing a
Whistleblower
Program
SEC Open
Meeting
May 25, 2011

- The new SEC whistle-blower program, implemented under Section 922 of the Dodd-Frank Act, is primarily intended to reward individuals who act early to expose violations and who provide significant evidence that helps the SEC bring successful cases.
- To be considered for an award, the SEC's rules require that a whistle-blower must voluntarily provide the SEC with original information that leads to the successful enforcement by the SEC of a federal court or administrative action in which the SEC obtains monetary sanctions totaling more than \$1 million.

Comparison of major jurisdictions

Legislative Framework	USA	UK	Australia	PRC	Singapore	HK
Legal protection Employee	Y	Y	Y	Limited	Limited	Limited
Financial	Y	N	N	N	N	N
Witness Protection Scheme	Y	Y	Y	Y	Y	Y

Protection of Whistle-blowers in Australia

Whistle-blower

- An officer
- An employee
- A contractor or their employees who has a contract to supply goods or services

Protection

- information provided to SAIC in confidence remains confidential
- victimisation of whistle-blowers a crime.
- civil and criminal liability for making the disclosure exemption

Qualified Receivers

- Australian Securities and Investment Commission
- Auditor / member of audit team
- A director, secretary
- Senior manager

Protected Disclosure

- Any person authorised by the company to receive revelations
- Must give their name
- Have reasonable grounds to suspect contravention of corporations Act or ASIC Act
- Act in good faith

Source

- **Information Sheet 0052 (INFO 0052**
- <http://www.asic.gov.au/asic/asic.nsf/byheadline/Protection+for+whistleblowers?openDocument>

UK Framework

Definition of Whistle-blowing

- Making a disclosure in the public interest

Whistle-blower

- Worker
- Believes malpractice in the work place is happening or has happened or will happen
- Reveals information of the right type (“qualifying disclosure”)
- Reveals to the right person in the right way (“protected disclosure”)

Qualifying Disclosure

- Criminal offences
- Failure to comply with a legal obligation
- Miscarriage of Justice
- Threats to an individual's health and safety
- Damage to the environment
- A deliberate attempt to cover up any of the above
- Must not break the law in order to make a disclosure or legal professional privilege

Protected Disclosure

- Made in good faith
- Reasonably believes the information is substantially true
- Reasonably believes that they are making the disclosure to the right “prescribed person”

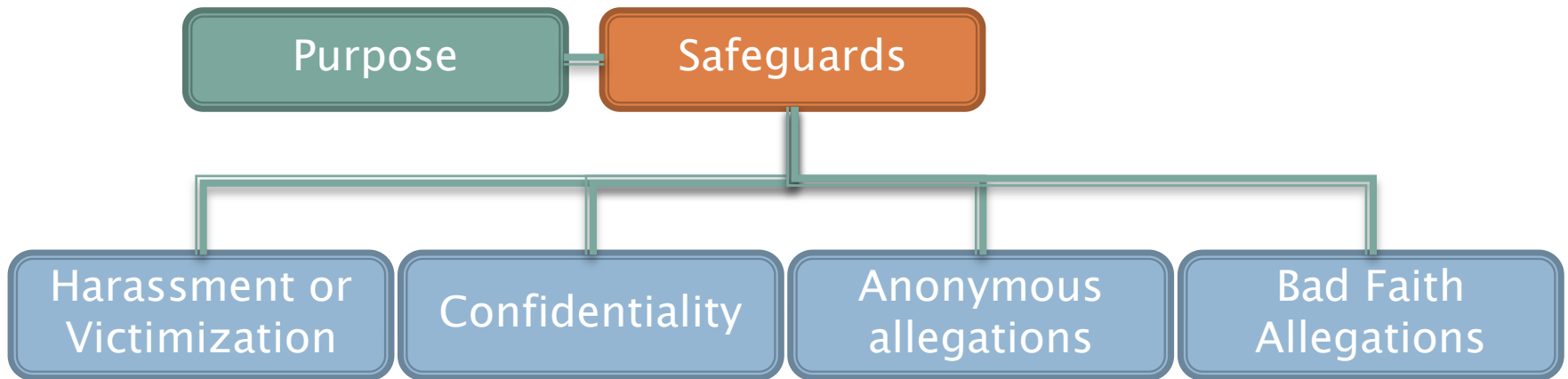
Dismissal or Victimisation for whistle- blowing

- Can claim unfair dismissal
- Can claim detrimental treatment

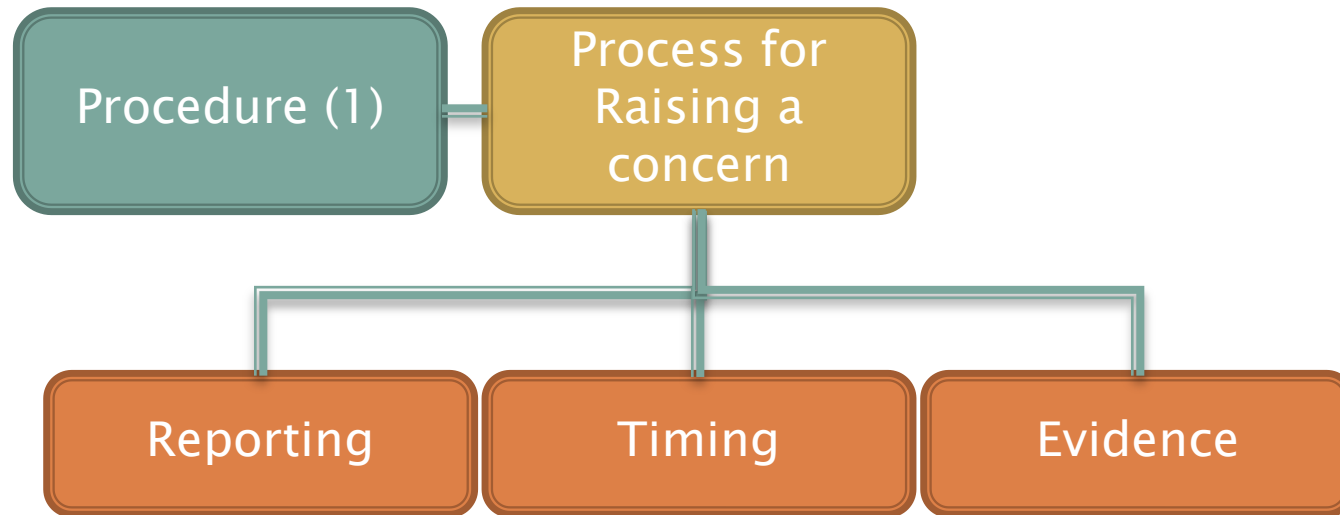
Recommended Code of Practice

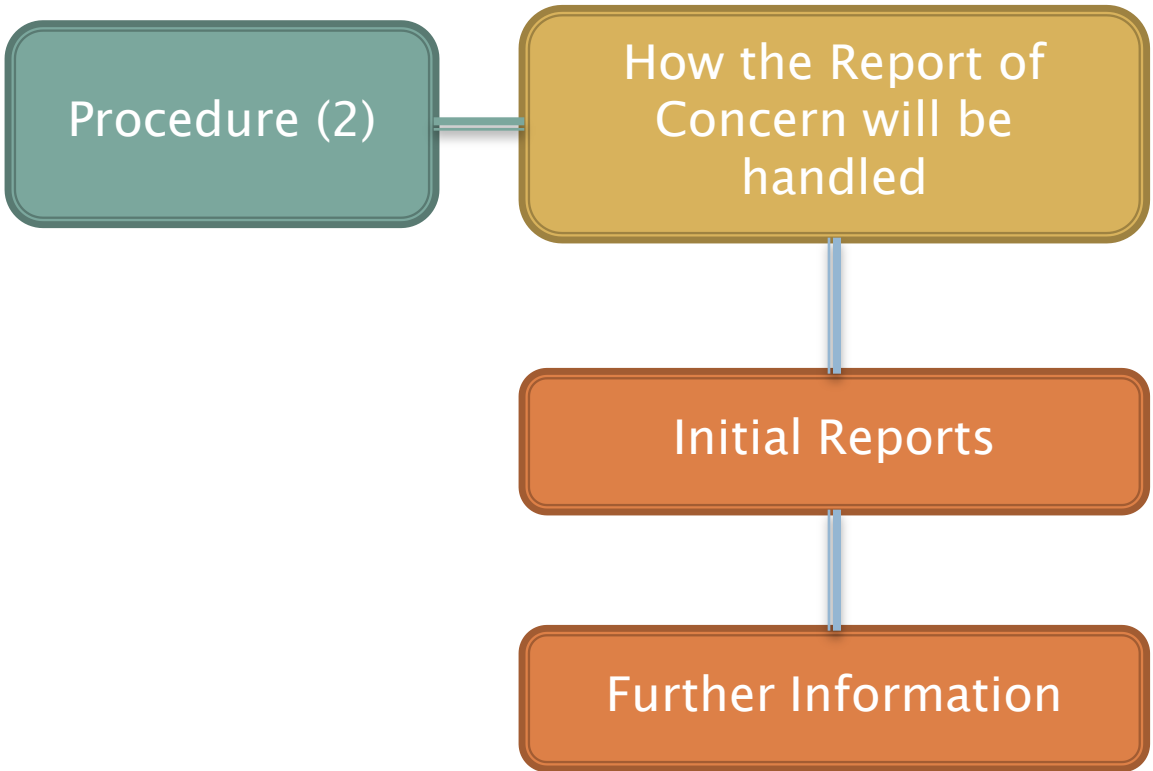
- Public concerns at work
- An independent organisation
- www.bsigroup.com
- Developed by public
- Concern at work at collaboration with British standards

Main features – Whistle-blower Policy



Main Features – Whistle-blower Policy





Sample Whistle-blowing Policy

Singapore

USA

PRC

UK

HK

Relevant tool kits / Guidance

Principles of Internal Investigation

Fair + Lawful

Reasonable suspicious

Defamation

Breach of Confidence

Fraud Risk Management

Example

Managing the business Risk of Fraud

Sponsored by IIA AICPA ACE

Personal Data piracy Ordinance

The six Data Protection Principles

Monitoring of Employees at Work Guidelines

Key Principles



Fraud Detection

- **Detective Controls**
 - **Whistleblower Hotlines**
 - Process Controls
 - Proactive detection procedures
- Documentation of detection techniques
- Assessing of the effectiveness of detective controls
- Continuing monitoring

