

Whistle Blower Act

Protection of the Whistleblower Act (CAP 527)
Act VIII of 2013 as amended by Act LXVII of 2021

Guidelines - Whistleblowing Procedures

Introduction

These guidelines are based on the Protection of the Whistleblower Act (CAP 527), Act VIII of 2013 as amended by Act LXVII of 2021.

Its aim is to assist Senior Management within the Ministry for the Economy, European Funds and Lands (MEFL), to follow a proper structure composed of a Whistleblowing Reporting Office made up of Whistleblowing Reporting Officer/s, with the intent to be able to deal with cases and taking the right procedures in case where present or past employees raise alarm on an act of corruption or illegality committed by their superiors, subordinates and/or other colleagues, whilst knowing how to protect persons who make said disclosures from detrimental actions.

It is also meant to guide persons (Whistleblowers) who would like to file reports regarding alleged improper practices, by way of becoming conversant with the procedures, channels to use and other details emanating from the Act.

The provision of the Act shall only apply to disclosures of information made after the 15th of September 2013, which is the date when the Act came into force.

General Information

Internal Disclosures - Each Ministry shall have in operation internal procedures for receiving and dealing with information about any improper practice allegedly committed.

When it comes to MEFL, a Whistleblowing Reporting Office has been set up where it could be easily reached through the below channels:

Email: whistleblower.mefl@gov.mt

Telephone: 2220 9825

External Disclosures – In case of Public Administration, the Authority prescribed to receive external disclosures is the External Disclosure Whistleblowing Unit within the Cabinet Office.

Details are as follows:

Email: whistleblower.external@gov.mt

Telephone: 2200 1285

Public Disclosures – It is when a person decides to directly disclose information to the press.

NB: Disclosures, whether being Internal, External and/or Public are protected whenever they are deemed to be in line with Section 1 of Part III of the Act.

Prohibition of Detrimental Action

It is important to note the safeguards and protection that the Act is offering to the Whistleblower in case where a person decides to report improper behaviour, as it is outlined in the below, mainly:

1. A Whistleblower may not be subjected to detrimental action on account of having made a protected disclosure; and
2. Shall not be liable to any civil or criminal proceedings or to a disciplinary proceeding for having made such a disclosure; even
3. When the Whistleblower was in good faith mistaken about the disclosure's import; or
4. That any perceived threat to the public interest on which the disclosure was based has not materialised; or
5. When the person making the disclosure has not fully respected the procedural requirements of this Act or of any regulations and guidelines made under this Act.

Extended Protection

Apart from the Whistleblower, protection shall, where relevant, be extended to:

1. Facilitators (a person who assists a reporting person in the reporting process in a work-related context and whose assistance should be confidential); and
2. Third persons such as colleagues and relatives who might suffer retaliation in a work-related context.

Accessibility

The Whistleblower shall have access to:

1. Comprehensive and independent information and advice which is easily accessible to the public and free of charge;
2. Procedures and remedies available;
3. Protection against retaliation;
4. Rights;
5. Effective assistance from competent authorities; and
6. Legal Aid in criminal and in cross-border civil proceedings.

No Immunity to Whistleblower

Likewise, it is important to note the following:

1. There shall be no immunity to the Whistleblower in case where the Whistleblower results to be the perpetrator himself or herself, or an accomplice in an improper practice which constitutes a crime or contravention; and
2. Nothing shall prevent Public Administration from instituting disciplinary/criminal proceedings against the Whistleblower where an improper practice is arising from his own conduct.

Prohibition of Disclosure

Prohibition of disclosure is vital to protect information and the identification of the Whistleblower thereof. Hence, it is important to note that:

1. The Ministry's Whistleblowing Reporting Office (in case of an internal disclosure) and the External Disclosure Whistleblowing Unit (in case of an external disclosure) shall not disclose information that identifies or may lead to the identification of the Whistleblower unless the Whistleblower consents in writing to the disclosure of that information; and
2. Shall not disclose the contents of the case to other Ministries or departments of which it forms part, unless it is in the public interest for further investigation to be carried out by others or the police; and
3. Shall not use or disclose information for purposes which goes beyond of what is necessary for proper follow-up and action;

NB: The protection to be provided to the Whistleblower shall not be subject to any exceptions and no court order may order the disclosure of the identity of any Whistleblower without his or her consent.

Issuance of Guidance

From time to time, the External Disclosure Whistleblowing Unit may issue guidelines to set out:

1. The duties of communication between the Unit and the Whistleblower and restrictions thereon; and
2. The rules for disclosure to other Ministries/departments.

Processing of Personal Data

Any processing of personal data carried out by the External Disclosure Whistleblowing Unit and the Ministry's Whistleblowing Reporting Office shall be in line with Regulation (EU) 2016/679 and repealing Directive 95/46/EC (General Data Protection Regulation).

Application to the Civil Court

1. A person who believes that detrimental action has been taken or is to be taken against him in reprisal for a protected disclosure may file an application to the First Hall, Civil Court.
2. As a result, the Court may take different actions where it finds that a person has taken or intends to take detrimental action against a person in reprisal for a protected disclosure, foremost of which injunctions and remedies, determining the amount of damages, including, but not limited to, the determination of moral damages.

NB: Any person who may suffered detrimental action because of making a protected disclosure shall, without prejudice to another right under any other law, have a right to compensation for any damages caused.

Protected Disclosure

When it comes to protected disclosures, whether being internal and/or external, the person reporting improper behaviour to the Whistleblowing Reporting Office within the Ministry or to the External Disclosures Whistleblowing Unit at Cabinet Office, is to be guided by the following:

1. A disclosure should be considered as protected disclosure when the Whistleblower has reasonable grounds to believe that the information on breaches disclosed was true at the time of disclosure;
2. On the other hand, protection cannot be given to an employee who knowingly discloses false information, so much so that such an act is punishable under the Criminal Code;
3. Anonymously made disclosures shall not be protected in terms of this Act, but the Ministry's Office or the Unit may receive and process anonymous disclosures and take them into consideration in determining whether improper practice has occurred;
4. Despite the breach that is made anonymously the Whistleblower is identified and suffers retaliation, the disclosure shall still be a protected disclosure provided that the breach disclosed was true at the time of disclosure.

Internal Disclosure

Each Ministry in the vest of Employer shall have in operation, internal procedures for receiving and dealing with protected information. Consequently, the following are the procedures to be adopted and followed by the Ministry concerned which are also fundamental for persons who would like to report improper practices, mainly:

1. Channels in receiving disclosures in writing, verbally or both; where
2. Verbal disclosures should be possibly made through telephone or other voice messaging systems;
3. Upon request by the person disclosing information, a physical meeting should be granted within a reasonable timeframe; and
4. Such channels must be safe and operated in a secure manner, guaranteeing confidentiality of the identity of the Whistleblower and third parties mentioned in the disclosure, preventing access by non-authorized staff members;
5. Designation of a Whistleblowing Reporting Officer/s within the Ministry's Whistleblowing Reporting Office, who must be competent for following-up on reports, as he or she can also be the one receiving a protected disclosure, and which will maintain a line of communication with the Whistleblower;
6. All Ministry's employees must be clearly informed about the existence of this possibility to report improper practices to the Office, including its internal procedures, as adequate information on how to use procedures shall be published widely and republished at intervals;
7. Employees shall be informed regarding the procedures for reporting externally to the competent Authority, which in the case of public administration is the External Disclosures Whistleblowing Unit within Cabinet Office;
8. Nevertheless, an internal disclosure may reach the Head or Deputy Head of the Ministry in

case where internal procedures are absent, or when the Whistleblower believes that the Officer in charge may be involved in the alleged improper practice or holds a relationship with the person involved in the alleged improper practice.

Notice to Whistleblower

1. The Ministry's Whistleblowing Reporting Office shall acknowledge receipt of an internal disclosure within seven (7) days of receipt and provide feedback within reasonable time and not exceeding three (3) months from the acknowledgement of receipt; or
2. If no acknowledgement was sent to the reporting person, it must be three (3) months from the expiry of the seven (7) day period after the report was made;
3. Where it is apparent from external action that proper actions have been taken to rectify the improper practice, it will not be necessary for the Ministry's Office to notify the person who made the disclosure;
4. When the detection of improper practice constitutes a crime or contravention under any applicable law, the Ministry's Office may refer the report to the Police for investigation;
5. However, should the subject matter of the report be rectified, no provision of any law shall be interpreted as imposing an obligation on the Ministry's Office to report such matter.

External Disclosure

1. Except as provided in this part, protection of external disclosure can only be considered if an internal disclosure has already been made to the Office within the Ministry or attempted to be made;
2. Nevertheless, an external disclosure may be made to the External Disclosures Whistleblowing Unit directly, in case where the Head of the Ministry or department is or may be involved in the improper practice alleged in the report; or
3. Due to the urgency of the matter and/or exceptional circumstances; or
4. When the Whistleblower may be subjected to an occupational detriment if he/she makes an internal disclosure; or
5. Where evidence of improper practice might risk being destroyed or concealed; or
6. When the Whistleblower receives no information regarding the status of the case once disclosing information internally; or
7. When it is evident to the Whistleblower that no action on the matter has been taken;

NB: Whenever a person makes a disclosure to the External Disclosures Whistleblowing Unit, the Unit must within forty-five (45) days after receiving the disclosure consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally, before informing the Whistleblower with the outcome.

INFORMATION REGARDING THE EXTERNAL DISCLOSURES WHISTLEBLOWING UNIT

The Unit is independent and autonomous for receiving and handling information on breaches,

ensuring the completeness, integrity, and confidentiality of information without giving access to nonauthorised personnel. The below is information regarding the standards that the Unit concerned must follow, mainly:

1. The Unit shall designate staff responsible for handling reports, particularly, to provide information on procedures of reporting to any interested person, to receive and follow up external disclosures and to maintain contact with the Whistleblower;
2. Staff members should receive specific training for the purposes of handling reports as specified in point 2;
3. The Unit shall publish on their website:- a) the conditions for qualifying for protection; b) the contact details of the Unit, in particular, the postal and electronic addresses, phone numbers, indicating whether the phone conversations are recorded; c) the procedures applicable to the reporting of breaches; d) the confidentiality regime and processing of personal data; e) the nature of follow up that shall be given to reports; f) the remedies and procedures for protection against retaliation;
4. It shall enable external disclosures in writing and orally (telephone or through voice messaging systems) or by means of physical meeting;
5. The durable storage of information should be enabled to serve as evidence during investigations and shall be stored for no longer than it is necessary;
6. The Unit shall deal with the case promptly and acknowledge receipt of disclosure within seven (7) days, unless such a prompt reply would jeopardise the protection of the reporting person's identity;
7. Feedback to the Whistleblower should be given within a reasonable time frame not exceeding 3 months or 6 months in duly justified cases;
8. The Unit shall Communicate to the Whistleblower the outcome of investigations triggered by the report; and
9. Shall review their procedures for receiving disclosures and their follow up, regularly and at least once every three (3) years;
10. Repetitive reports which do not contain any meaningful new information on improper practice should be closed off.

NB: The standards as applicable under the remit of the Act are also observed and duly maintained by the Ministry concerned.

Reference of Information to another Authority

Where the External Disclosures Whistleblowing Unit in the vest of Authority for Public Administration, to whom a protected disclosure is made considers that the information disclosed would be more appropriate to be investigated by another Authority (as listed in the First Schedule in terms of this Act) or the Police, it should refer that information within thirty (30) days and immediately inform the Whistleblower in writing, provided that the identity of the same Whistleblower shall not be disclosed except with his prior consent in writing.

Public Disclosures

1. Except as provided in this part, a public disclosure shall only be protected if an internal and external disclosure has already been made, but no appropriate action was taken;
2. A public disclosure shall be considered as a protected disclosure when the Whistleblower has reasonable grounds to believe that the information in hand is a breach which may constitute an imminent or manifest danger to the public interest or when in the case of external reporting there is a risk of retaliation or low prospect to address the alleged breach;
3. This shall not apply to cases where a person directly discloses information to the press, establishing a system of protection relating to freedom of expression and information.

OFFENCES & PENALTIES

Please refer to Article 19 of the Protection of the Whistleblower Act, CAP.527

Regulation & Guidelines

1. The Ministry should remain vigilant to take on board, issue and publish regulations and guidelines which may be introduced by the Minister from time to time;
2. Guidelines which will be taken on board by the Ministry shall be binding;
3. Except for amendments to the guidelines which are purely administrative in nature, which come into force immediately upon the posting thereof on the official website of the said Ministry, any new guidelines or amendments to guidelines shall come into force on the lapse of fifteen (15) days after they are posted on the official website of the Ministry.

Miscellaneous

1. Any provisions in a contract of service are void in so far as it purports to exclude provisions of the Act, including an agreement to refrain from instituting or continuing any proceeding under this Act; or
2. When based on discouraging the employee from making a protected disclosure under this Act;
3. The External Disclosures Whistleblowing Unit and the Ministry's Whistleblowing Reporting Office shall keep records of every report received in compliance with the confidentiality requirements, provided that reports shall be stored for no longer than it is necessary;
4. Where a recorded telephone line or voice messaging system is used for disclosing, the External Disclosures Whistleblowing Unit and Ministry's Whistleblowing Reporting Office shall have the right to document the oral reporting, by either making a recording of the conversation in a durable and retrievable form or through a complete and accurate transcript, where the Whistleblower shall be offered the possibility to check, rectify and agree upon before signing it;
6. Where an unrecorded telephone line or voice messaging system is used for disclosing, the External Disclosures Whistleblowing Unit and Ministry's Office shall have the right to document the oral reporting in the form of accurate minutes and the Whistleblower shall be offered the possibility to check, rectify and agree upon before signing them;

7. Where a person requests a meeting with the Whistleblowing Disclosures Reporting Unit and the Ministry's Office for disclosing purposes, the latter shall have the right to document the meeting either by making a recording of the conversation in a durable and retrievable form or through accurate minutes and the Whistleblower shall be offered the possibility to check, rectify and agree upon before signing them;

8. This Act shall apply to disclosures of information made after the coming into force of this Act.