




# Whistleblowing: The Asian Landscape

February 2019




The Asia region has varying approaches to whistleblowing protection. These range from more sophisticated and developed whistleblowing cultures in China and Japan to early signs of engagement with the whistleblowing concept in Singapore and Indonesia.

	 Australia	 China	 Hong Kong
<b>ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?</b>	<b>Yes</b> Recent changes to the Corporations Act 2001 and the Taxation Administration Act 1953 mean that public companies and large proprietary companies must have a whistleblower policy in place containing certain prescribed information. The policy must be available to employees and officers of the company. The changes take effect on 1 July 2019 but companies will have until at least 1 January 2020 to put in place their whistleblower policy.  The latest Corporate Governance Principles and Recommendations issued by the Council of the Australian Stock Exchange (ASX) also recommend that companies have and disclose a whistleblower policy and ensure the board (or a committee of the board) is informed of any material incidents reported under that policy. The Corporate Governance Principles suggest that whistleblower policies clearly identify the types of concerns that may be reported and explain the protections available to whistleblowers (amongst other things).	<b>Yes, Limited</b> Listed companies must have whistleblowing policies and protections in place.  They are also required to set up a whistleblowing hotline.  In the private sector, trust and insurance companies are required to establish whistleblowing channels or policies. Large and medium sized private companies are encouraged to adopt whistleblowing policies.	<b>No</b> The Corporate Governance Code of the Listing Rules recommends that audit committees of Hong Kong listed companies should implement whistleblowing policies and systems.  Hong Kong listed companies must state whether they have complied with the code and if not they must give reasons in the Corporate Governance Report in their annual reports.
<b>ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?</b>	<b>Yes</b> Public and private sector employees and workers are covered by whistleblowing protection.  Recent changes to the whistleblowing framework have enhanced the protections available to whistleblowers. Disclosures of misconduct or an improper state of affairs by officers, employees, suppliers, associates of the company and family members or dependents of employees may be protected under the new statutory framework. However, protection may not be available where the disclosure relates to certain types of personal work-related grievances.  The identity of whistleblowers must now be kept confidential, unless an exception applies.  Under the new legislative framework, whistleblowers have improved access to compensation where they are subject to detrimental conduct, reprisal or retaliation as a result of their disclosure. There is also now a reverse onus, where the company must prove that any detrimental conduct was not in response to the whistleblower's disclosure.	<b>Yes, Limited</b> There is no general law that protects workplace whistleblowers. There are some regulations in specific areas such as environmental protection and manufacturing safety where the whistleblower's identity is protected and whistleblowers are legally protected from being subjected to a detriment (such as a pay cut) and/or from being dismissed on the grounds of making a disclosure.  Local labour authorities have powers to order an employer who acts against a whistleblower to take remedial action.	<b>Yes, Limited</b> Employees are protected if their disclosure relates to employment rights and safety at work.  An employer cannot dismiss or threaten to dismiss an employee or in any way discriminate against an employee.  The whistleblower's identity can only be disclosed by the Labour Department with his consent.  If the whistleblowing relates to discrimination or harassment, whistleblowers cannot be treated less favourably than any other employee or worker. Any information given to the Equal Opportunities Commission about a formal investigation must not be disclosed except in limited circumstances.




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ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS?	No	No	No
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	<b>Yes</b> <p>The new maximum penalty for victimisation of whistleblowers is AU\$25,200 (for individuals) and AU\$126,000 (for companies) or two years' imprisonment, or both.</p> <p>Under the new legislative framework, failure to comply with the requirement to have (and make available) a whistleblower policy is an offence of strict liability with a penalty of 60 penalty units (currently AU\$12,600).</p> <p>The new maximum penalty for breaching a whistleblower's anonymity is AU\$6,300 (for individuals) and AU\$31,500 (for companies) or six months' imprisonment, or both.</p> <p>In addition to these penalties, individuals and corporates will face pecuniary penalties up to AU\$200,000 and AU\$1m respectively, for breaching a whistleblower's anonymity and for victimising or threatening to victimise a whistleblower.</p>	No	No
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	<b>No</b> <p>A Parliamentary Committee had recommended paying a 'reward' to whistleblowers based on a proportion of the penalty. This was not carried over into the recent amendments to the legislation. However, the Labour Party has proposed to establish a Whistleblower Rewards Scheme, if elected in May 2019. Under the proposed scheme, whistleblowers would receive a percentage of the penalties arising out of wrongdoing they reveal.</p>	<b>Yes, Limited</b> <p>There are financial incentives available to individuals, entities or organisations encouraging reporting to regulators in certain areas (e.g. work safety, certain securities and futures activities and food and drugs).</p>	No

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	 India – Talwar Thakore & Associates (TT&A)	 Indonesia	 Japan
ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?	<b>Yes</b> Listed companies must implement an “effective whistleblowing policy”. The Companies Act also requires companies which are not listed to establish a whistleblowing policy if they are: (i) companies that accept public deposits; and (ii) have borrowings from banks and financial institutions exceeding INR 500,000,000 (approximately US\$6,839,839).	<b>Yes, Limited</b> There is no legal requirement for a company/organisation to have a whistleblowing policy. Banks, insurance and reinsurance companies must implement whistleblowing policies.	<b>No</b> Under the Corporate Governance Code, there is a “comply or explain” obligation for companies listed on stock exchanges in Japan (other than Mothers and JASDAQ).
ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?	<b>No</b>	<b>No</b>	<b>No</b>
ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?	<b>Yes, Limited</b> Companies are required to implement adequate safeguards against “victimisation” of employees. The Securities and Exchange Board of India has recommended that the identities of the whistleblower and any other employee investigating the report must be protected. Employees must be given direct access to the chairperson of the audit committee (where appropriate) or the director responsible for supervising the policy.	<b>Yes, Limited</b> An employee cannot be dismissed for reporting to the relevant authority. The employee would be entitled to claim for unfair dismissal in the Industrial Court. The Industrial Court has the power to reinstate the employee. The employee has the right to terminate the employment relationship and be entitled to severance, service and compensation pay if the employer incites or orders the employee to commit an act contrary to laws and regulations. Any person causing a witness or a victim to lose their job because they provided information in court proceedings may be subject to a maximum term of imprisonment of seven years and a maximum fine of IDR 500 million. These sanctions may be tripled in the case of companies. The company may also be subject to administrative sanctions, i.e. revocation of business licence, revocation of legal entity status, and dismissal of the management board.	<b>Yes</b> Whistleblowers are legally protected from suffering a detriment (including being dismissed) on the grounds of making a disclosure that is protected under the Whistleblower Protection Act.
ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS?	<b>Yes, Limited</b> The Securities and Exchange Board of India has recommended that a leniency programme is introduced to incentivise anybody connected with any offences or infringements to disclose these and assist the regulatory authorities.	<b>No</b>	<b>No</b>
CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?	<b>Yes, Limited</b> There are no sanctions if a company fails to respond appropriately to whistleblowing, but it could be subject to penalties for failure to establish and maintain an effective policy.	<b>No</b>	<b>No</b>
ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?	<b>No</b>	<b>No</b>	<b>No</b>

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	 Singapore	 Thailand	 Vietnam
<b>ARE THERE ANY LEGAL REQUIREMENTS FOR A COMPANY/ORGANISATION TO HAVE A WHISTLEBLOWING POLICY?</b>	<b>No</b> The Code of Corporate Governance 2018 recommends companies listed on the Singapore Exchange Trading Limited implement whistleblowing policies. Companies are expected to comply with the provisions of the Code, variations are acceptable if companies explicitly state and explain how their practices are consistent with the principles of the Code.	<b>No</b> The Corporate Governance Code for Listed Companies 2017 issued by the Securities and Exchange Commission Office recommends that listed companies put in place a whistleblowing procedure on an “apply-or-explain” basis.  The Principles of Good Corporate Governance for Listed Companies 2012 issued by the Stock Exchange of Thailand recommends that the board of directors put in place, on a “comply-or-explain” basis, a clear procedure on whistleblowing and publish it on the company’s website or in the annual report.	<b>No</b> In practice, many Vietnamese subsidiaries of foreign companies have established hotlines and whistleblowing policies.
<b>ARE THERE ANY PROPOSALS TO REQUIRE COMPANIES/ ORGANISATIONS TO HAVE A WHISTLEBLOWING POLICY?</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>ARE WORKPLACE WHISTLEBLOWERS PROTECTED BY LAW?</b>	<b>Yes, Limited</b> There is no general whistleblower protection legislation but whistleblowers are protected under specific legislation. For example, there are provisions in the Prevention of Corruption Act that safeguard the identity of informers whose information leads to the investigation and prosecution of offences under the Act.	<b>Yes, Limited</b> Employees of Relevant Companies are protected (these are companies which have obtained an approval to offer shares to the public, companies whose shares are listed on a Thai stock exchange and securities companies).  A Relevant Company is prohibited from taking any action which is considered unfair treatment against its employees or a contractor because the person made a disclosure, gave information to, co-operated with or assisted the regulator (e.g. change their position, job description or work place, suspend or dismiss them).	<b>Yes, Limited</b> Public sector workers cannot be dismissed or be subjected to any unfair treatment. They are also entitled to protection at their home and to their reputation.  An employee who has a contract of employment may request support from their trade union, local labour management agency or other competent authority to protect their rights and interests.
<b>ARE THERE ANY PROPOSALS TO INTRODUCE NEW LAWS TO PROTECT WORKPLACE WHISTLEBLOWERS?</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>CAN FINANCIAL PENALTIES BE IMPOSED BY THE AUTHORITIES ON COMPANIES THAT DON'T COMPLY WITH WHISTLEBLOWING LAW?</b>	<b>No</b>	<b>Yes, Limited</b> A Relevant Company who treats a whistleblower unfairly may be subject to a fine of up to Thai Baht 500,000.	<b>No</b>
<b>ARE THERE ANY FINANCIAL INCENTIVES TO ENCOURAGE WORKERS TO BLOW THE WHISTLE?</b>	<b>No</b>	<b>No</b>	<b>Yes, Limited</b> Whistleblowers, who have made a report and prevented a crime being committed are entitled to a financial reward and public recognition if this includes exposure of corruption.

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