

The frontline of the “Whistleblowing System” that is essential for global companies (Part 4)

The application of lawyers in global Whistleblowing Systems

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Introduction: The expertise and independence of lawyers
Whistleblowing Systems are at the heart of corporate fraud prevention and compliance. Especially for companies operating globally, the operation of the system must take into account the differences in legal systems and cultural backgrounds in different countries and regions.



OAL works with lawyers in law firms not only in Japan but also around the world, and we believe that the cooperation of local lawyers is highly necessary to establish and operate an effective global Whistleblowing System. The legal expertise and independence of lawyers is an essential factor in making Whistleblowing Systems effective and bringing trust and transparency to companies. For this reason, this article will explain the significance of a lawyer-supported Whistleblowing System and how it can be used in practice.

1. The role played by lawyers and their strengths

1. Combining legal expertise and practical experience

In addition to Japan's Whistleblower Protection Act, lawyers have an understanding of and experience in operating multinational laws and regulations, ranging from the US SOX Act (Sarbanes-Oxley Act), the EU Whistleblower Protection Directive and GDPR, and the personal data protection laws of China, Thailand, Indonesia and Vietnam. This knowledge is important not only in the design of the system, but also in all aspects, including determining the legality of the content of the report, how to preserve evidence in an investigation, and how to anticipate and counter future litigation risks.

In addition, through experience in dealing with a large number of actual corporate frauds, lawyers are able to detect signs of risk that are difficult to see in “formal reporting”. For example, in cases of opacity in accounting procedures in foreign subsidiaries, retaliatory action by local managers and collusion with suppliers, we can reveal structural problems behind the surface facts.

In addition, while the information in reports is often unorganised, lawyers are also skilled in organising the necessary facts. Therefore, the involvement of lawyers can make the reporting system a “beneficial system for the company”.

2. Independence from management and peace of mind for whistleblowers

There is a real concern that internal Whistleblowing System will not properly investigate and suppress reports about supervisors and executives if they are not good for the company internally. This risk is particularly heightened when the local subsidiary is located at a distance from the head office.

Lawyers, as third parties outside the company, have no vested interest in the company and can be involved from a neutral and objective standpoint, from receiving the report to advising on the response policy, thereby increasing the psychological safety of the informant. This credibility is the biggest factor in encouraging the use of the system.

3. Strict information management through confidentiality obligations

Lawyers are obliged to maintain legal confidentiality in the course of their duties and the identity and content of the informant will not be inappropriately shared. Particularly in countries where reporting requires a high degree of anonymity, or in areas where reprisals are a real possibility, having a lawyer as a point of contact is a great source of reassurance.

2. Specific assistance provided by lawyers

1. Institutional design and development of internal rules

In some multinational companies, it is necessary to change the system design in each country. Our lawyers will develop rules and policies in line with the legal system of each country and the actual business situation of your company, and provide consistent support for the preparation and translation of internal rules in multiple languages, such as Japanese, English and Chinese.

When drafting the rules and policies, we clearly state detailed items such as whether anonymous reporting is allowed or not, the scope of investigations, the scope of reporting obligations, etc., to prevent confusion on the ground.

2. Operation of external reporting contact points and support for investigations

The lawyer acts as a contact point for external reporting, receiving reports by e-mail, web form, etc., and classifying risks, determining initial response policies and examining the need for investigations.

If an investigation is necessary, the lawyer takes the lead and conducts interviews with relevant parties, preserves evidence (electronic data, ledgers, etc.) and coordinates with external forensics. When conducting investigations overseas, we cooperate with reliable local lawyers to ensure legal integrity and practicality.

In addition, the system is to support the coordination of information from the working level to the management level by organising records and preparing reports related to the handling of reports, proposing corrective measures internally and assisting with reporting to the board of directors and the audit committee.

3. Support for education, awareness-raising and culture-building

Even if a system exists, it will not function if employees do not recognise it as something they can really use. Lawyers support the understanding and penetration of the system by conducting training for employees, preparing response manuals for managers and formulating messages from top management.

In addition, as different countries have different reporting cultures and perceptions of the relationship with supervisors, part of the lawyer's role is to assemble a communication strategy that takes into account the local culture and employee mentality.

3. Corporate benefits of employing a lawyer

1. Minimising legal and managerial risks

Mistakes in initial response can lead to serious consequences, such as labour lawsuits, shareholder lawsuits and the suspension of transactions with business partners. The involvement of lawyers can simultaneously curb a company's legal and reputational risks by improving the accuracy of the response to compliance violations and taking measures to prevent recurrence.

In particular, in some recent cases, mass media reports have brought to light how an external reporting system did not exist or was suppressed within the company, and the lack of a system itself is now a time when companies are being held accountable.

2. Reduce the burden on internal resources and optimise costs

Operating a Whistleblowing System can be a significant burden for the legal and human resources departments.

By having a lawyer act as an external contact point, professional handling can be efficiently outsourced, contributing to a reduction in internal workload and personnel costs.

In addition, as the process of designing, operating and reviewing the system is standardised, the system can be flexibly deployed when expanding or reorganising sites.

3. Scoring points for ESG and sustainability measures

Investors and ESG assessment bodies pay attention to the independence of the Whistleblowing System and the whistleblower protection mechanism. The operation of the system by independent lawyers leads to a high evaluation of the governance aspects and contributes to improving the brand value and trustworthiness of the company.

4. Future prospects and use of technology

1. Strengthening global regulation

The EU Whistleblower Directive's mandatory anonymous reporting and the revision of Japan's Whistleblower Protection Act require companies to have a more sophisticated response system. In addition, personal data regulations in India, Thailand, China and other countries are affecting the way investigations are conducted, making internationalisation of system operation essential.

2. integration with new technologies

AI-based reporting classification and prediction models are effective for efficient response in global companies with high cases.

Record management by blockchain realises a tamper-proof reporting log, which can be used for audit response and third-party verification. On the other hand, these technologies also face challenges such as algorithmic bias and difficulties in ensuring anonymity, so verification from a legal perspective is essential for their introduction.

5. Lastly

Global Whistleblowing Systems go beyond mere compliance measures and are a management infrastructure that supports corporate sustainability and long-term value enhancement. Particularly in an era where the expansion of overseas business is accompanied by the question of how to manage “invisible risks”, cooperation with trusted external experts is essential.

Lawyers are one of the few experts who can provide consistent support from system design to operation, investigation and response, and we hope that you will consider using lawyers when necessary.

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