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Employee whistleblowing: legislative perspectives and public perceptions in the United Arab Emirates (UAE)

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Abstract

Purpose – The purpose of this paper is to explore the legislative framework that governs whistleblowing in the UAE.

Design/methodology/approach – The paper examines social perceptions and practical challenges related to the act of whistleblowing. It focuses on the effectiveness, limitations and implications of the current legal status of whistleblowing in the UAE.

Findings – The UAE does not have a unified legal framework that governs whistleblowing and whistleblower protections like in the case of the USA. Therefore, there is an urgent need for comprehensive federal regulations that will apply to all sectors across the entire UAE. Each emirate and economic zone can then model their whistleblowing regulations against the federal law to ensure consistency and uniformity in application. The UAE will also benefit from public awareness and education programs to address the conservative culture that discourages whistleblowing. Most importantly, corporate governance and culture are central to the success of existing laws considering the overreliance on organizations and employees.

Originality/value – The paper provides a robust and analytical discussion of the whistleblowing laws and regulations in the UAE to dissect current practices and implications for future practice.

Keywords Accountability, Transparency, Terrorism financing, Money laundering, Good governance, Employee whistleblowing

Paper type Research paper

Introduction

Employee whistleblowing continues to gain significance in the context of increasing cases of corporate corruption and scandals. Employee whistleblowing entails the act of an employee disclosing information about unethical, illegal or corrupt practices within an organization to an external authority, such as a regulatory body or law enforcement agency (Ballan, 2017). The practice serves as a mechanism for transparency, accountability and the prevention of fraudulent practices within organizations. Specifically, whistleblowing allows employees to identify and expose corrupt practices within organizations. Law enforcement authorities use information from whistleblowing to conduct further investigations to prosecute offending individuals. Employee whistleblowing can also serve as a deterrent against potential corruption (Gibbs, 2020). As such, several countries have implemented legal frameworks and protections to encourage whistleblowing and protect employees who disclose information about corrupt practices. United Arab Emirates (UAE) is one of the countries that have established legislative frameworks that govern employee whistleblowing.

The role of employee whistleblowing is indispensable in the fight against corporate corruption, but this practice still has inherent challenges. The goal of whistleblowing is to

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disclose corrupt practices that would otherwise remain invisible. However, whistleblowers often fulfil their mandate in the context of significant risk. The protection of whistleblowers is the most important element to consider when developing whistleblower policies and regulations. Such protections are crucial considering that whistleblowers can become victims of employers' retaliatory actions (Smaili, 2023). Consequently, the limits of whistleblowing have inadvertently affected the effectiveness of this practice, especially in the UAE. For instance, whistleblowers are likely to face criminal and civil charges if their actions lead to defamation. Additionally, there is a lack of comprehensive whistleblower protection, which remains the main impediment to reporting misconduct or wrongdoing in the UAE. The UAE also lacks comprehensive, stand-alone whistleblowing laws, undermining the effectiveness of whistleblowing (Saxena, 2023). A combination of these issues has established the basis for this paper.

The purpose of this paper is to explore the legislative framework that governs whistleblowing in the UAE. The paper also examines social perceptions and practical challenges related to the act of whistleblowing. Thus, the paper focuses on the effectiveness, limitations and implications of the current legal status of whistleblowing in the UAE. A noteworthy observation is that whistleblowing has traditionally been a less common practice in the UAE compared to other developed jurisdictions. Notably, the UAE Penal Code has a specific provision that obligates all individuals in the UAE to report criminal activity. Nonetheless, the legal requirement lacks rigorous enforcement in practice. The legal provision also lacks clear mechanisms to either address unethical practices or protect from retaliation those who report criminal activity (Saxena, 2023). Thus, the paper provides a robust and analytical discussion of the whistleblowing laws and regulations in the UAE to dissect current practices and implications for future practice. The author's primary intention is to strengthen the application of whistleblower policies and regulations at the corporate level.

The case for whistleblower protection

Decades of corporate scandals and corruption have been instrumental in influencing whistleblowing and whistleblower protections. Enron, WorldCom and Wells Fargo scandals are high-profile cases that exposed widespread fraud, manipulation and unethical practices within major corporations prior to the economic recession. The 2008 financial crisis would then reveal the extent of corporate corruption, fraud and collision. The Subprime Mortgage Crisis, which formed the crust of the 2007–2008 financial crisis, exemplified the level of fraud in the financial industry. The crisis emerged when banks packaged and sold risky mortgages as high-quality investments, leading to a bubble in the housing market. Many banks collapsed when the housing bubble burst, resulting in significant financial losses and widespread economic instability (Duca, 2013). Whistleblowers played a crucial role in exposing fraudulent practices in the industry because they were often the first to identify and report misconduct. According to Duca (2013), widespread fraud, corruption and manipulation within the financial industry would then prompt calls for strong legislative action in response to increased public demand for accountability and transparency.

The 2008 financial crisis led to a significant loss of public trust in the financial industry, increasing public demand for accountability and transparency within finances. Whistleblowers would then become key players in upholding transparency and accountability. Consequently, there was an uptick in public awareness and support for whistleblowers and their protections (Kampourakis, 2020). Governments responded by taking several measures to strengthen whistleblower protections. One such example is the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was signed into law in 2010. The legislation included provisions for the protection of whistleblowers, such as the establishment of the Securities and Exchange Commission and Commodity Futures Trading Commission whistleblower programs. The two programs provide financial incentives for individuals who report securities law violations, in addition to offering protection against retaliation for those who do so (Khan *et al.*, 2022). Nonetheless, the 2016 Wells Fargo accounting scandal has raised fundamental questions about the effectiveness of whistleblower laws and regulations.

The Wells Fargo fake accounts scandal that emerged in 2016 was a momentous event in the history of the banking industry. Two important issues drawn from this scandal provide the rationale for this paper. First, the Office of the Comptroller of the Currency, America's chief federal banking regulator, was aware of unethical activities at Wells Fargo as early as January 2010 after receiving 700 cases of whistleblower complaints (Egan, 2017). The regulator did not act against the bank until 2016 when the situation was critical. Second, Wells Fargo's top management also ignored whistleblower reports and instead took retaliatory action against whistleblowers. For instance, a federal regulator ordered the bank to pay $5.4m to a former manager for unlawful dismissal. The former manager claimed to have lost his job after reporting suspected fraudulent behavior to superiors and a bank ethics hotline. The regulator also ordered the reinstatement of the former manager in addition to monetary compensation (Cowley, 2017). The two issues highlight potential limitations with laws and regulations related to employee whistleblowing, laying the foundation for this paper.

The financial crisis and the subsequent legislation in the USA have established a strong foundation for assessing the effectiveness of whistleblower policies in the UAE. The UAE is in a unique position because of its booming construction and real estate sector, as well as the status of Dubai as a financial hub in the region. UAE's construction and real estate have increased the Emirate's vulnerability to money laundering (ML) and other corporate financial crimes. Consider the case where the Financial Action Task Force (FATF) has consistently listed the UAE on the "grey list" of countries that have failed to combat ML and terrorist financing. The designation means that the FATF requires close monitoring because of UAE's strategic deficiencies and bad practices with respect to international ML and terrorist financing (Barrington, 2022). The UAE, particularly Dubai, has played a central role in some of the biggest scandals on a global scale. Notable cases include the Luanda Leaks, the Fishrot Files, the Russian Laundromat and the Gupta Brothers. The cited cases relate to ML, but they have far-reaching implications for whistleblowing.

The growing significance of economic security in the UAE continues to inform laws and regulations to combat financial crimes. There is currently a limited number of widely publicized cases of corporate corruption or scandals in the UAE. Nevertheless, the Abraaj Group Scandal (Global Impact) provides key insights about the evolution and effectiveness of whistleblower protections in the UAE. The Abraaj Group was a Dubai-based private equity firm that collapsed in 2018 following allegations of financial mismanagement and fraud. The scandal had significant global repercussions, affecting investors, employees and the reputation of the UAE as a financial hub (Clark, 2021). One crucial aspect of the Abraaj Group scandal was the role played by whistleblowers. A group of former employees approached international media outlets with evidence of financial irregularities within the firm. The UAE had established a legal framework to protect whistleblowers and encourage reporting of wrongdoing by the time the scandal emerged. However, Clark (2021) argued that the Abraaj scandal highlighted several challenges within this system, specifically limited protections for whistleblowers, fear of retaliation and cultural barriers.

The UAE has undoubtedly developed a robust legal framework to counter ML and terrorist financing. Nonetheless, expanding regulations and escalating enforcement activity are not enough to deter the flow of illicit funds. The two strategies are also inadequate to stem the wave of corporate fraud. Furthermore, no authority has the resources and infrastructure necessary to micromanage the policing of the corporate world and financial institutions. Therefore, focus is now shifting toward self-policing, with a growing emphasis on promoting transparency and accountability, as well as fostering an ethical corporate culture. Ongoing discussions are now emphasizing the extension of whistleblower protection clauses and legal provisions to encourage employees to self-police. Specifically, the Association of Certified Fraud Examiners has published a series of reports, which have consistently identified whistleblowing as the foremost approach to uncover cases of financial mismanagement or crime (Barrington, 2022). However, a myriad of challenges and limitations persist across jurisdictions, and the UAE is not an exception.

Whistleblowers are continuously being penalized for disclosing unethical activities, even in jurisdictions that have established laws for protecting whistleblowers. Individuals/employees who choose to report suspicious actions are often at increased personal risk. Governments around the world have adopted whistleblower protection clauses but such efforts are counterproductive where whistleblowing becomes a risky venture. Consequently, retaliatory actions and the possibility of personal risk have discouraged employees from speaking out against corporate misdemeanors. A pertinent question that emerges is about the scarcity of whistleblowers despite the existence of whistleblower protections across jurisdictions. Protection of the financial system from potential reputational damage and loss is in the best interest of governments. Similarly, strategic organizations usually uncover and address any form of misconduct or unethical behavior where there is still ample opportunity to remediate adverse effects. Thus, it is necessary to ensure that whistleblower policies have a robust legal framework and are immune from the social/cultural stigma associated with whistleblowing.

Whistleblowing in the UAE

The UAE is not an exception as governments across the globe continue to prioritize corporate crime on their law enforcement agendas. The UAE's legislative landscape is changing with the introduction of new regulations aimed at establishing economic security. The effect of whistleblower protection on corporate governance and confidence in markets is the driving force behind the call for whistleblower protection in the UAE. Specifically, corporate scandals linked to corruption and unethical practices have contributed to the growing importance of whistleblower protections in the UAE (Al Matarneh, 2018). The UAE has enacted several laws and regulations to protect whistleblowers and encourage reporting of corruption. The country's legal framework provides a strong foundation for protecting whistleblowers and encouraging reporting of corruption. Nonetheless, UAE's approach to whistleblower protection is piecemeal rather than comprehensive, which undermines the success of existing laws and regulations. A notable observation is that the UAE has limited and varying degrees of whistleblower protections that have been incorporated in different pieces of legislation (Gibbs, 2020).

The UAE Labor Law is a notable federal law that provides whistleblower protection in the country. Specifically, Article 47 of the UAE Labor Law, Federal Law No. 8 of 1980, states that an employee who discloses a violation committed by their employer shall not be terminated or subjected to any harm or prejudice because of their disclosure. The law aims to encourage employees to report any wrongdoing they witness within their workplace without fear of retaliation. Therefore, the UAE Labor Law is an authoritative source for understanding whistleblowing protections under Article 47. The law provides the legal framework and guidelines for employees and employers in the UAE (Saxena, 2023).

Nonetheless, it is imperative to point out that the UAE Labor Law does not apply directly to whistleblowing related to financial crimes. The law has a limited scope of protected disclosures considering that it primarily focuses on protecting employees who report violations related to labor rights, such as non-payment of wages, unsafe working conditions or unfair treatment. Thus, this law may not provide comprehensive protection for disclosures related to other areas such as corruption, fraud or environmental violations (Saxena, 2023).

The Federal Law No. 31/2021 (the New Penal Code) is another federal-level legislation that obligates all individuals residing in the UAE to report any type of criminal activity. The law, which came into effect on January 2, 2022, addresses specific issues related to whistleblowing and whistleblower protection. Article 218 states that any person who:

> "subjects a witness, expert, or any other person involved in a legal process to physical or moral harm or threatens to do so, in order to force him to change his testimony or not to appear before the competent authorities" shall be punished by imprisonment and a fine.

Comparatively, Article 219 encourages reporting wrongdoing by providing immunity for individuals who report crimes or violations in good faith. Article 219 states that:

> [. . .] any person who, in good faith, reports a crime or violation to the competent authorities, or assists in the investigation or prosecution of the crime or violation, shall not be held liable for any offense committed in the course of reporting or assisting (Al Matarneh, 2018).

The provisions can be construed as offering protection to individuals/employees who choose to report unethical conduct in their respective organizations.

The New Penal Code has inherent limitations despite its strength in promoting whistleblowing and protecting whistleblowers. Consider the case where the New Penal Code has a broad definition of whistleblowing. The definition includes reporting not only criminal activities but also unlawful or unethical conduct. The broad definition allows for the protection of whistleblowers who report a wide range of wrongdoing, including corruption, fraud and abuse of power (Barr, 2019). However, the broad definition has created a situation where the Penal Code lacks clarity on specific elements of whistleblowing and whistleblower protections. A notable example is whereby the New Penal Code does not provide clear guidelines on how whistleblower protections should be implemented or enforced. Barr (2019) argued that the lack of clarity often leads to inconsistent application of the law, leaving whistleblowers without adequate protection in some cases. An effective legal framework provides adequate protection for whistleblowers. Research findings have shown that whistleblowers are more likely to report cases of criminality and wrongdoing if they feel adequately protected from personal risks.

The question about clarity is an important one because the UAE does not have a unified law that covers whistleblower protections in all seven emirates. Additionally, the UAE law does not have an explicit definition of whistleblowing, which reinforces the issue of clarity. The New Penal Code indeed acknowledges the importance of whistleblowing but there is no rigorous imposition of whistleblower protections in practice. For example, the New Penal Code does not explicitly specify unethical practices for charging criminal offenses related to whistleblowing. The main concern is that the New Penal Code only protects those who report or disclose any form of criminal activity (Elhais, 2023). The absence of clarity in both definition and application has discouraged many employees from disclosing corrupt practices. The UAE did not afford whistleblowers any form of protection until recently. Consequently, whistleblowing has traditionally been a less common practice in the UAE compared to other countries, particularly the USA. The USA is a unique jurisdiction because of its robust whistleblower legal framework that not only protects whistleblowers but also incentivizes them to make disclosures (Gibbs, 2020).

Currently, the New Penal Code is a foundational legal policy that provides some protection for whistleblowers although the scope is limited. The protection only extends to individuals who report wrongdoing in good faith, and there are no specific provisions for protecting whistleblowers who disclose information to the media or the public (Lexology, 2023). Moreover, the New Penal Code does not explicitly protect whistleblowers from retaliation in the form of demotions, transfers or other negative job actions. All employees in the UAE work under a statutory obligation to maintain the highest level of confidentiality in their respective employment contracts under Article 16 of the 2021 UAE Labor Law. Notably, the New Penal Code contains provisions that outline various statutory obligations for individuals, including those related to privacy, confidentiality and reporting of crimes. The goal of the statutory obligations is to maintain public order and protect personal information (Lexology, 2023). However, statutory obligations can also hinder whistleblowing and whistleblower protection in four ways, as illustrated below.

First, the New Penal Code contains privacy and confidentiality provisions for individuals and organizations. These provisions are essential to safeguard personal information, but they can also hinder whistleblowers from reporting wrongdoing because of the fear of disclosing confidential information. Second, the New Penal Code requires individuals to report crimes and misconduct to the appropriate authorities. However, this obligation may deter potential whistleblowers from coming forward if they believe that such action could lead to personal reprisals or legal consequences. Third, the New Penal Code contains provisions that punish individuals for disclosing confidential information, even if the information is related to wrongdoing or illegal activities. The possibility of punishment can discourage potential whistleblowers from reporting misconduct. Fourth, the New Penal Code does not specifically provide for whistleblower protection laws, leaving whistleblowers vulnerable to reprisals, such as job loss, harassment or legal action (Kothari and Surana, 2023a, 2023b). Therefore, statutory obligations within the New Penal Code can undermine whistleblowing and whistleblower protection.

Furthermore, the New Penal Code does not establish an independent oversight body to receive and investigate whistleblower reports. The absence of an independent mechanism for handling whistleblower complaints can undermine the credibility and effectiveness of the whistleblower protection provisions. The missing independent oversight body may also lead to delays in addressing whistleblower reports because they may be filtered through various government departments and agencies. Thus, crucial information can be lost, mismanaged or compromised as whistleblower reports transition through multiple agencies (Kothari and Surana, 2023a, 2023b). On the other hand, a lack of transparency in handling whistleblower reports can erode public trust in the UAE's legal system and government institutions. The public could perceive the system as being susceptible to corruption and cover-ups, defeating the essence of whistleblowing. An independent, oversight body will create a sense of public trust, security and support. (Lexology, 2023). Despite these challenges, the UAE legislative landscape continues to evolve with the introduction of new laws in Dubai and Abu Dhabi.

In summary, only the Dubai International Financial Center (DIFC) and Abu Dhabi Global Market (ADGM) have overarching laws that govern whistleblowing or the protection of whistleblowers. Both DIFC and ADGM have implemented comprehensive whistleblowing policies that aim to encourage the reporting of misconduct, protect whistleblowers from retaliation and ensure the confidentiality of their identities. While there are similarities between the two policies, there are some differences in the reporting mechanisms and the structure of the Whistleblowing Committees. The Whistleblowing Committee is an independent body responsible for reviewing and investigating reported concerns in the DIFC. In contrast, the ADGM policy establishes a Whistleblowing Committee that consists of members from various regulatory and supervisory authorities. Despite these differences, both financial zones share the common goal of fostering a culture of transparency and accountability, which is essential for maintaining the integrity of their respective financial markets. The next sections will explore whistleblower protections in the DIFC and ADGM, including their limitations.

Whistleblower law and protections in the DIFC

The Financial Crime Law (Dubai Law No. 4 of 2016 on Finance Crimes) constituted UAE's first attempt to legislate whistleblower protection. The Financial Crime Law is a comprehensive legislation that the Government of Dubai enacted to combat financial crimes and protect the integrity of the financial system in the DIFC. The law covers a wide range of offenses, including ML, terrorist financing, fraud, bribery, corruption and embezzlement. The law also establishes strict regulations and procedures for the prevention, detection, investigation and prosecution of financial crimes. The law recognizes the importance of whistleblowing in combating financial crimes and provides significant implications for individuals who choose to report such offenses (Barr, 2019). The law has specific provisions that aim to encourage individuals with knowledge of financial crimes to come forward and contribute to maintaining the integrity of Dubai's financial system. Enactment of the Financial Crime Law marked a significant milestone by establishing a strong legal framework for whistleblower protection.

The definition of whistleblowing is the first issue to consider when examining the effectiveness of Financial Crime Law. The issue is critical because the UAE law does not explicitly define the concept of whistleblowing. The Financial Crime Law also lacks a clear definition of "whistleblowing" in its text. Nonetheless, the Law recognizes the importance of whistleblowing in combating financial crimes and it provides certain provisions to protect whistleblowers from retaliation and ensure their confidentiality. Specifically, Article 29 of the Law states that whistleblowers shall be granted protection from any form of retaliation or discrimination because of their reporting. The protection includes safeguarding their identity and ensuring their confidentiality throughout the process. Article 30 further prohibits disclosing any information that may reveal the identity of the whistleblower unless required by law or with the whistleblower's consent (Merali *et al.*, 2023). Protection for whistleblowers, as enshrined in this Law, is a departure from the New Penal Code since the Law relieves potential whistleblowers from statutory obligations.

The lack of clear reporting mechanisms has been a major impediment to successful whistleblowing protection under the New Penal Code. The Financial Crime Law has addressed this limitation by establishing clear reporting mechanisms for whistleblowers to report suspected financial crimes. Article 31 requires designated entities, such as financial institutions and other businesses subject to anti-ML regulations, to establish internal reporting channels for employees to report suspicious activities. The designated entities must ensure that reporting channels are easily accessible, confidential and allow anonymous reporting (Lexology, 2023). Conversely, the Law is limited to the extent that the designated entities enjoy the autonomy to create internal reporting mechanisms without clear guidelines. There is no assurance that these entities will adopt best practices when establishing reporting systems. Additionally, internal reporting mechanisms may not necessarily encourage whistleblowing in the context of statutory obligations (Merali *et al.*, 2023). Thus, whistleblowers may find it difficult to know how to report their concerns and may face challenges in navigating the reporting process.

One of the concerns about the New Penal Code is that it does not incentivize whistleblowers to report unethical practices. As such, whistleblowing is still a relatively unpopular practice in the UAE. However, Article 32 of the Financial Crime Law provides a financial reward of up to 5% of the value of the recovered funds or assets to incentivize whistleblowing. The 5% reward is only possible when information from the whistleblower contributes significantly to the successful prosecution and determination of cases (Kothari and Surana, 2023a, 2023b). A pertinent issue is whether financial rewards are effective incentives. Critics argue that offering financial rewards for whistleblowing may undermine the moral imperative to report misconduct solely for the sake of justice or public interest. According to Kothari and Surana (2023a, 2023b), critics have argued that financial motives could compromise the integrity and credibility of whistleblowers. Additionally, financial incentives alone may not be sufficient to overcome the various psychological, social and organizational barriers that deter individuals from whistleblowing. Factors such as fear of retaliation, loyalty to colleagues or employers and doubts about the effectiveness of reporting mechanisms can outweigh financial considerations (Krügel and Uhl, 2023).

Statutory obligations have been the greatest hindrance to whistleblowing under the New Penal Code. The Financial Crime Law has established a comprehensive legal framework to strengthen the legal framework against financial crimes by addressing the limitations of statutory obligations in the New Penal Code. The Law provides protection and incentives for whistleblowers. Nevertheless, Article 33 of the Law imposes specific whistleblower obligations. Specifically, this Article requires whistleblowers to provide accurate and complete information, cooperate with authorities during investigations and refrain from disclosing any information related to the investigation without proper authorization (Lexology, 2023). The whistleblower obligations mean that the Law only protects whistleblowers who report financial crimes to the competent authorities, such as the Dubai Financial Services Authority (DFSA) or the Dubai Police. The conditionality here limits the scope of protection available to whistleblowers who may be uncomfortable reporting their concerns to the designated authorities. Effectively, the Financial Crime Law suffers the same limitation in the New Penal Code where there is not an independent oversight body to protect whistleblowers.

Article 34 of the Law also addresses the issue of statutory obligations by extending legal immunity to whistleblowers. The Law grants whistleblowers legal immunity from prosecution for any offenses they may have been involved in while reporting financial crimes. Article 34 ensures that whistleblowers are not subject to criminal liability for their involvement in the reported offense. However, whistleblowers should not commit any other serious crimes unrelated to their reporting to gain legal immunity (Merali *et al.*, 2023). Legal immunity is a significant achievement of the Financial Crime Law because it shields whistleblowers from the limits of statutory obligations. The UAE has strict defamation laws, which could potentially be used against whistleblowers who report misconduct. The practice of whistleblowing often involves making allegations against individuals or organizations. Consequently, potential whistleblowers face the risk of being sued for defamation, which invalidates the logic of whistleblowing (Kothari and Surana, 2023a, 2023b). Therefore, legal immunity in the Financial Crime Law could encourage more whistleblowers to report crimes without the fear of retaliation or prosecution.

The Dubai Government strengthened its legislative framework with the enactment of the DIFC Operating Law No. 7 of 2018. The Law provides the legal basis for the establishment and operation of companies within the DIFC. The Law specifically sets out the rights, obligations and responsibilities of companies operating in the DIFC, as well as the regulatory framework governing their activities. The DIFC Operating Law recognizes the importance of whistleblowing and incorporates provisions that encourage and protect whistleblowers. The law establishes a clear framework for reporting concerns, ensuring that employees feel safe and secure in reporting potential wrongdoings (Barr, 2019). The DIFC Operating Law is the result of a series of legislative amendments and revisions over the years, with the aim of improving the legal framework and ensuring its relevance to the evolving needs of the financial sector. The law replaces DIFC Law No. 1 of 2004 and incorporates amendments made to the DIFC Law by Law No. 2 of 2015, Law No. 3 of 2015 and Law No. 4 of 2016 (Amin, 2023). The DIFC Operating Law has made specific amends to the Finance Crime Law in relation to whistleblower protections.

First, the DIFC Operating Law has established a more robust and streamlined whistleblowing mechanism to encourage individuals to report financial crimes and misconduct. The new mechanisms ensure that the whistleblowing process is more efficient, effective and secure. Notable changes include a dedicated Whistleblowing Office within the DIFC to handle and process all whistleblowing complaints; a secure and confidential online reporting system for whistleblowers to submit their concerns; and a clear and accessible whistleblowing policy that outlines the procedures, protections and responsibilities for both whistleblowers and the DIFC authorities (Amin, 2023). Enhanced whistleblower mechanisms have fostered a culture of transparency and accountability within the financial sector. However, the DIFC Operating Law has a limited scope like its predecessors because it is only applicable to entities that operate within the DIFC jurisdiction. Whistleblowers outside this jurisdiction may not receive the same level of protection and incentives provided by the law (Merali *et al.*, 2023). This limitation amplifies further the fragmented nature of regulations that govern whistleblowing in the UAE.

Second, the DIFC Operating Law has introduced and expanded provisions for whistleblower protection. The amendments embedded in Article 19 have established mechanisms to protect individuals who report suspected financial crimes in good faith from retaliation or adverse actions by their employers or other parties. Whistleblower protections are like those in the preceding laws, but Article 19 extends them to employees, former employees and third parties who provide information on potential wrongdoings. Furthermore, the law ensures that the identity of the whistleblower remains confidential, and the DIFC authorities will take all necessary measures to protect the whistleblower's identity. The level of confidentiality could encourage more individuals to come forward with valuable information without fearing retribution (Amin, 2023). Nonetheless, the DIFC does not explicitly extend the same level of whistleblower protection to witnesses who provide evidence or support during investigations. The exclusion of witnesses could be detrimental to the successful prosecution of cases, which is the benchmark for incentives and rewards.

Third, Article 20 of the DIFC Law has outlined clear procedures for reporting concerns. Whistleblowers can report their concerns to the relevant authorities within the DIFC, such as the Compliance Officer, the Legal Affairs Department or the DIFC Enforcement Department. The reporting party must provide sufficient information to enable the relevant authority to investigate the matter effectively (Barr, 2019). Legal uncertainty is an important issue that has undermined the effectiveness of the Financial Crime Law. Notably, interpretation and application of the Financial Crime Law may be subject to legal uncertainty, further discouraging potential whistleblowers from coming forward. Thus, the DIFC Operating Law has instituted much-needed amendments by introducing stricter penalties and sanctions for individuals and entities involved in financial crimes under Article 21. The amendments provide for increased fines, imprisonment terms or both, depending on the severity of the offense committed. The DFIC law has also introduced regulatory offenses that include failure to comply with anti-ML regulations, failure to report suspicious transactions and obstruction of investigations (Amin, 2023).

The DIFC Operating Law has indeed strengthened whistleblower protections and expanded sanctions, but the law has notable limitations. For example, the law lacks external reporting mechanisms despite mandating organizations to establish internal reporting mechanisms. The main concern is that the law does not have explicit requirements for organizations to have external reporting channels. The primary assumption is that organizations will self-regulate and notify authorities about unethical practices. The assumption is overreaching considering that organizations may choose not to report practices that could be detrimental to their reputation and performance. Findings reported in Nobanee *et al.* (2020) exemplify the problem with self-disclosure. External disclosure of anti-corruption efforts can serve as a mechanism to align the interests of bank management with those of shareholders, depositors and other stakeholders. However, the authors uncovered an overall weak state of anti-corruption disclosure practices in the UAE (Nobanee *et al.*, 2020). The sensitive and complicated nature of corruption means that organizations will always try to conceal corrupt practices, as well as weaken or avoid disclosure.

Finally, the DFSA launched a whistleblowing regime on April 7, 2022 to provide a more consistent approach to reporting and recording misconduct by DFSA-regulated entities. The regime is the first of its kind that a financial service regulator is introducing in the UAE. The whistleblowing regime applies to all DFSA Regulated Entities operating in or from the DIFC. The regime provides enhanced legal protection for persons who report misconduct internally within DFSA-regulated entities or externally to their auditor, the DFSA or a law enforcement agency (Clarke *et al.*, 2022). Effectively, the DFSA Whistleblowing regime can play a key role in addressing questions related to oversight and self-regulation. The regime requires that all DFSA "regulated entities" have internal arrangements to facilitate disclosure of regulatory concerns, a provision that aligns with predecessor laws. However, the whistleblowing regime moves further by allowing potential whistleblowers to submit external reports of whether they have already made an internal report. The option for external reporting will undoubtedly enhance public trust in the whistleblowing regime.

The whistleblowing regime is also transformative than the predecessor laws because it promotes a culture of whistleblowing across regulated entities. The Financial Crime Law and the DIFC Operating Law have both constituted specific regulations to protect whistleblowers. The goal of the whistleblower protections included in the two laws is to encourage whistleblowing. Furthermore, the effectiveness of both regimes relies heavily on the willingness of organizations and individuals to report cases of financial impropriety. However, these laws have omitted an important element of whistleblowing, which is organizational culture. Organizational culture plays a significant role in promoting both internal and external whistleblowing. Organizations an environment where employees feel comfortable reporting misconduct without fear of retaliation by fostering a culture of transparency, ethical behavior, support and accountability (Smaili, 2023). The whistleblower regime has addressed the issue of organizational culture. The regime requires that regulated entities to create a Whistleblowing culture by increasing transparency around how they handle regulatory concerns, assess those concerns and escalate them where appropriate (Clarke *et al.*, 2022).

In summary, the DIFC has a robust legislative framework for whistleblowing. The recently constituted whistleblower regime illustrates the growing importance of whistleblowing in the DIFC. Nonetheless, there are practical issues that can either make or break the effectiveness of existing laws. Notably, there are multiple laws in the DIFC with overlapping provisions, as presented in the preceding discussions. For instance, the new whistleblower regime exists alongside the DFIC Operating Law. Multinational organizations/companies operating in the DIFC are also subject to whistleblowing provisions and protections of other jurisdictions. Thus, the potential overlap between different regimes can have a profound effect on the implementation and enforcement efforts. A common trend across the broader legislative agenda is that the effectiveness of whistleblower provisions depends on the actions of organizations and whistleblowers. The trend effectively underscores the role of organizational culture and public awareness to ensure the successful implementation of current and future laws. Both issues are critical considering that whistleblowing is still a nascent concept across the UAE.

Whistleblower law and protections in the Abu Dhabi Global Market

ADGM is presently the only authority that defines the concept of whistleblowing in its legislative framework. The ADGM published its own guiding principles on whistleblowing (the "Guidance") on 6 December 2022 under the auspices of the Financial Services Regulatory Authority (FSRA). The guidance has established aims, objectives and best practice for 5,000 registered companies that operate in the ADGM. The purpose of the guidance is to provide a transparent and effective framework for reporting misconduct and ensuring that whistleblowers are protected and treated fairly. The guidance defines whistleblowing as "The reporting of suspected wrongdoing to someone in authority" (Lexology, 2023). On the other hand, the guidance defines a whistleblower as "The person who makes the report [who] might be part of the relevant organization (such as an employee) or an external third party" (Kothari and Surana, 2023a, 2023b). The guidance came into effect nine months following the ratification of the DFSA's whistleblowing regime. However, Kothari and Surana (2023a, 2023b) have demonstrated how the FSRA has taken a different approach to whistleblowing by developing guiding principles that complement existing regulatory frameworks in the ADGM instead of opting for legally binding legal provisions.

The guidance has both strengths and limitations that are worth noting. First, the guidance has a comprehensive scope because its principles apply to the entire financial services industry in the ADGM. Such a broad scope ensures that whistleblowers can report wrongdoing across a wide range of financial institutions. Specifically, the principles cover a wide range of topics related to whistleblowing, including the definition of whistleblowing, protection for whistleblowers, reporting mechanisms and investigation procedures. The comprehensive nature of these principles ensures that all aspects of whistleblowing are addressed, providing a robust framework for organizations to follow (Kothari and Surana, 2023a, 2023b). Conversely, the guidance does not have enforcement mechanisms because it is a guidance for covered entities rather than a regulatory framework. Thus, the ADGM's guiding principles provide valuable guidance for covered they lack the force of law. The lack of enforceability may limit their effectiveness in ensuring compliance by organizations. Without legal backing, organizations may choose to ignore or deviate from the principles in the absence of legal backing, potentially undermining the intended purpose (Khan, 2022).

Second, clear reporting mechanisms are central to the effectiveness and success of legislative framework that govern whistleblowing protections. The ADGM's guiding principles emphasize the need for organizations to establish clear and accessible reporting mechanisms. They provide guidance on how organizations can develop effective channels for employees to report concerns, ensuring that whistleblowers have a straightforward process to follow when disclosing wrongdoing (Khan, 2022). The level of clarity in the guidance addresses gaps in the UAE Penal Code given that the UAE does not have a unified legal framework that is applicable to all the seven emirates. Nevertheless, the guidance could face challenges related to inconsistent implementation across different organizations. The principles enshrined in the guidance are voluntary, meaning that organizations may interpret and implement them differently. The main concern is that inconsistencies in implementation could lead to variations in the level of protection and support provided to whistleblowers. Consequently, these inconsistencies will be inimical to the overall goal of promoting whistleblowing in the ADGM by creating confusion (Kothari and Surana, 2023a, 2023b).

Third, investigation procedures determine the outcome of whistleblower regulations and guidelines. Most whistleblowing regulations are usually prescriptive, and they depend on the goodwill of organizations and employees. Consequently, there are always no clear guidelines for both internal and external reporting, which reduces the level of trust. The ADGM's guiding principles have navigated this issue by establishing fair and thorough investigation procedures. The principles outline the steps organizations should take when handling whistleblower reports, including conducting impartial investigations and taking appropriate remedial actions. By providing clear guidelines for investigations, the principles enhance transparency and accountability in addressing reported concerns (Khan, 2022). Conversely, limited understanding and awareness among both organizations and employees could negate the value of investigative procedures. Organizations and employees may not fully use or benefit from the principles if they are not fully aware of their rights and responsibilities regarding whistleblowing, highlighting the need for education and awareness programs (Ius Laboris, 2023).

Conclusion and recommendations for future practice

The ADGM guiding principles on whistleblowing and FSRA's new whistleblowing regime are now the most important authorities that define whistleblowing in the UAE. As such, a comparative analysis of both laws is necessary to identify ensuring issues and inform future legislative/regulatory efforts. While both the DFSA's whistleblowing regime and ADGM's guiding principles on whistleblowing have their strengths and limitations, they both serve an essential function in promoting transparency and accountability in the financial sector. The DFSA's regime offers stronger legal protection and confidentiality for whistleblowers, while ADGM's guiding principles have a broader scope and emphasize the importance of internal reporting channels. Ultimately, a comprehensive approach that combines the strengths of both regimes would be ideal for ensuring the effective reporting of wrongdoing and upholding the highest standards of conduct within the financial services industry. Therefore, both the ADGM guiding principles and DFSA's whistleblowing regime have established a strong foundation that could inform the development of a unified whistleblowing law in the UAE.

First, the UAE needs a unified approach to whistleblowing to address current problems with fragmented and overlapping provisions. The first step is to adopt common definitions and criteria for whistleblowing. Such an approach will ensure that the UAE develops a legal framework that covers all forms of financial misconduct and protects whistleblowers equally regardless of their location. Common definitions and criteria would also ensure that whistleblowers are recognized and protected uniformly across different sectors and industries within the UAE. This consistency would help eliminate ambiguity and confusion surrounding whistleblower protection laws and regulations, making it easier for individuals to understand their rights and responsibilities when reporting misconduct. Adopting common definitions and criteria for whistleblowing would also contribute to increased trust in institutions within the UAE. The UAE can demonstrate its commitment to transparency, accountability and good governance by implementing consistent standards for whistleblowing. Ultimately, this approach will rebuild trust in both public and private institutions.

Second, the UAE needs to foster a strong culture of whistleblowing through tailored educational programs and awareness. The UAE has a conservative culture that is deeply rooted in traditional values, which often emphasizes respect for authority, loyalty to the family and maintaining harmony within the community. Therefore, the UAE's conservative culture may discourage whistleblowing because it could lead to social stigma and damage personal relationships. The UAE society places a high value on collective goals and maintaining harmony within the community. Speaking out against wrongdoing may be seen as disloyal or disruptive, leading individuals to stay silent about unethical practices. Lack of awareness about whistleblowing worsens the problem with culture because many residents in the UAE may not be aware of the concept of whistleblowing or the legal channels available for reporting wrongdoing. A combination of these issues underscores the value of public awareness and educational interventions. A strong, unified legal framework will be meaningless and counterproductive unless the public is aware of its existence and importance.

Third, corporate/organizational culture should be an integral part of a unified whistleblowing regime in the UAE. Existing regulations and guidelines emphasize the role of organizations and employees in whistleblowing. Specifically, existing frameworks in both the DFIC and ADGM require that covered entities establish mechanisms for investigating and reporting whistleblower reports. However, only a few of these entities allow anonymous reporting. Additionally, there are no legal provisions to ensure transparent disclosures both internally and externally. Therefore, there is a need for corporate whistleblowing policies that will encourage the adoption of a strong corporate culture. Such a corporate culture should value ethical conduct and foster a sense of responsibility among employees to report any wrongdoing. On the other hand, whistleblowing is closely linked to corporate governance because it helps identify and rectify internal issues within organizations. Clear guidelines would ensure that organizations have robust mechanisms in place to handle whistleblowing reports effectively and efficiently.

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