



Corporate & Commercial Law Update

- ▶ WHISTLEBLOWER PROTECTION ACT 2010
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▶ WHISTLEBLOWER PROTECTION ACT 2010

Date of coming into force of the Act

As has been reported in the press recently and announced by the Government, the Act will come into force on 15th December 2010.

Key points of the Act

Thrust of the Act

The Act protects “whistleblowers” from “detrimental action” in the event they make a disclosure of “improper conduct” to an “enforcement agency”.

Definitions

A “whistleblower” is any person who makes a disclosure of the improper conduct to the relevant enforcement agency. Having regard to this broad meaning, a whistleblower can be an employee, vendor or supplier or any person or entity which has committed the improper conduct.

“Improper conduct” means any conduct which constitutes a “disciplinary offence” or a criminal offence. A “disciplinary offence” means any act or omission which is a breach of discipline as provided by law or in a code of conduct or a code of ethics or circulars or employment contract.

“Detrimental action” includes:

- (i) any action causing injury, loss or damage;
- (ii) intimidation or harassment;
- (iii) interference with employment or livelihood (including discrimination, discharge, demotion, suspension, disadvantage, termination or adverse treatment);
- (iv) a threat to do any of the above.

“Enforcement agency” means any Federal, State or local government department, unit or agency having investigation and enforcement functions. In the briefing given by the Government on the Act, the key Enforcement Agencies listed were the Malaysian Anti-Corruption Commission (MACC), The Royal Malaysian Police (PDRM), the Road Transport Department (JPJ) and Customs. It was also announced that the relevant Minister under the Act is the Minister in the Prime Minister’s Department.



Form of protection given to the whistleblower

The whistleblower is given protection upon making the disclosure of the improper conduct to the enforcement agency.

The protection consists of the following:

- (i) the information disclosed and the identity of the whistleblower is to be kept confidential;
- (ii) the whistleblower enjoys immunity from civil or criminal action (including disciplinary action);
- (iii) no person shall take any detrimental action against the whistleblower in reprisal for a disclosure of improper conduct.

Non-compliance with (i) and (iii) above is an offence under the Act. Furthermore if detrimental action is taken against the whistleblower, the enforcement agency may seek the following remedies from the court for the whistleblower:

- (i) damages or compensation;
- (ii) injunction
- (iii) any other relief the court deems fit.

The protection given to a whistleblower is revoked if:

- (i) the whistleblower himself has participated in the improper conduct;
- (ii) the whistleblower willfully makes a false statement in the disclosure of improper conduct;
- (iii) the disclosure is frivolous or vexatious;
- (iv) the disclosure involves questioning a government policy;
- (v) the disclosure is made solely or substantially for the purpose of avoiding dismissal or other disciplinary action
- (vi) the whistleblower in making the disclosure or providing further information commits an offence under the Act.

Implications for companies

Companies should be aware that in the event of a disclosure by a whistleblower the enforcement agency will investigate into the complaint and notify its findings to the employer and will then follow up with the employer as to what action is being taken on the improper conduct.

Companies should also refrain from taking any detrimental action against the whistleblower as this is an offence.

Companies are encouraged to have a whistle blowing policy within the company or the group so as to discourage whistleblowers from using the provisions of the Act which can have serious implications for the company. There is also a need for companies to ensure that their whistle blowing policies are aligned with the provisions of the Act.



► **COMPETITION ACT 2010 & COMPETITION COMMISSION ACT 2010**

The Competition Act 2010 has been gazetted as coming into force on 1st January 2012, whilst the Competition Commission Act 2010 has been gazetted as coming into force on 1st January 2011. During this one year period in 2011 prior to the coming into force of the Competition Act, it is expected that the Competition Commission will be working on establishing the operational and policy guidelines as to how the competition rules are to be applied and also creating awareness on the implications of the Competition Act on businesses.