

# ACCOUNTANT'S WARNING REGARDING THE LACK OF MANAGEMENT INTEGRITY

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## Abstract

*This article highlights the challenges faced by accountants when they find that the integrity of company management is poor. The main problem is in relation with the accountants' fear, mostly: suffering some repercussions from the disclosure of such information. Also, this article aims to emphasize the danger brought by covering and concealing incriminating information against the management; but also, how accountants could expose this information in such a way that they would not suffer, under no circumstances from such disclosures.*

**Keywords:** accountant, whistleblowing, whistleblower, management integrity.

## Introduction

Almost every sector of our society faces so called fights against the fraudulent practices. Deviant top management behavior can induce huge economic, social and emotional costs for innocent stakeholders and the corporate failure of the last decade have provided examples of this on a grand scale. (Richardson & Richardson 2005). For exemple managers are trying to put company's money into their own pockets through creative or illegal accounting (Yin 2003). Economic fraud destroys shareholders' value, threatens enterprises development, endangers employment opportunities and undermines good corporate governance. (ICC 2008)

The first person to notice the threat of misconduct, mismanagement and corruption within a public or private organization will usually be someone who works in or closely with the organization. While employees are the people best placed to raise any concerns they are also the ones who have the most to lose by disclosing sensitive information. (Hüttl & Léderer 2002)

At the first view it could be said that every whistleblowing from the inside of an entity is without ethics and that the company's employees should be loyal to that organization. But as an contra argument we could name the moral and juridical obligation of the company to take action into the community purpose. From the moment in which the corporations have an immoral behavior the society has the right to punished it. The companies' employees represent the best instrument for underlying their mistakes. (Yin 2003)

The accountants have privileged position within the society, and due to this position they have access to much information; in the case of appearing some irregularities in the society, they are the first ones who can notice it (Richardson and Richardson 2005).

When accountants identify inappropriate behavior by management, those accountants licensed by Professional Organizations have the responsibility to maintain the interest of the general public in the company (Lauren 2010). This being the case, the guidelines for potential whistleblowers accountants are set down by professional accounting bodies. They should reflect and support this important potential but unfortunately does not offer any professional body such as guidelines on whistleblower latent and therefore, the accountants will choose to remain silent (Richardson and

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Richardson 2005). But what should not be overlooked is the fact that the support may come from elsewhere. Thus, the most important support can be found in specific protective measures offered by each state for whistleblowers.

In this way, each accountant must understand that it is a social duty and moral obligation to make any disclosures of fraudulent practices. He must be aware of the consequences of silence, because it will be subjected to ongoing emotional stress and the management organization will continue to practice illegal actions until the organization would collapse, which will bring huge social consequences.

In order to avoid all these, the accountant needs to act. The first step he should make is informing about the solutions which are available, to overcome all the obstacles encountered when he decided to make revelations about the illegal practices of management.

### **The whistleblower concept**

“The sense of whistleblowing is common ever since the first whistleblower laws have been adopted: promptly reporting instances of suspected misconduct. The first law that can be regarded a whistleblowing law, was the Federal False Claims Act (1863) adopted during the Civil War in the United States. It was enacted in part because unscrupulous tradesman sold ill mules, faulty rifles and ammunition, and rancid rations and provisions to the Union Army”. (Hüttl & Léderer 2002)

“A whistleblower is generally defined as an employee who discloses potentially damaging information about their employer to an authority figure, such as their boss, the media, or a government official” (Krancher 2006 p. 80 cited by Evans 2008).

“Whistle blowing is a deliberate non-obligatory act of disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual suspected are anticipated which implicates and is under control of that organization, to an external entity having potential to rectify the wrongdoing”. (Peter B. 1999 cited by Richardson & Richardson 2005)

As an interpretation of the definitions given above we believe that a whistleblower is a person of integrity who took knowledge about various irregularities in the organization. Once he acknowledged these irregularities he also must be willing to disclose them. Disclosures may be made both inside and outside the establishment. There are several type of disclosures such as corruption, fraud or other wrongdoing.

Regarding the status of whistleblowers there is a paradox. For some (Stonefrost 1990, Vinten 1994) the warning about the integrity of management is an act of treason brought to the organization while for others, it is an act of morality and therefore it is their duty to make such disclosures. (Richardson & Richardson). Jackson (1992) argued that the disclosure of sensitive information is putting out the man who made these revelations in a thankless situation; the disclosures relating to management integrity, without using the internal procedures recommended in such cases, will be considered more likely to be irresponsible. If they still decide to use internal procedures and the problems inside the company remains unresolved, any act of disclosure will be considered further outwards as wicked. (Richardson & Richardson 2005).

On the other hand the supporters of whistleblowers bring the argument that any disclosure of information is an act of honor that protects the organization (Stanford 1990). Other author (David Banisar 2006) considers that disclosure of information is critical to the public, referring to the Enron scandal, where if they would have been made disclosure of fraudulent practices coming from leadership, they would have not be reached the economic and social disaster that took place.

We believe that any disclosure of information about management's integrity cannot be considered an act of betrayal at all, quite the contrary. Hence, like any entity to function properly, needs all its component parts, for it to achieve this status, so the entity has all the components needed to work towards a 'healthy functioning'. So when one of the components (management in this case) is against the proper functioning, it is up to the other existing party to remove the existing evil. It is

not considered an act of treason, but rather an act of great loyalty, but of course the main condition being that this is being made in good faith.

According to a survey conducted by Transparency International, the means for making referrals to crime may be internal or external. In general, we can distinguish three different levels: the internal ways can be the counselors of ethics or the hotlines provided by the organization, but which are managed externally; the means provided by regulatory bodies such as police or the institution 'people Advocate "or other external means such as media or civil society organizations. (Alternative to silence: Whistleblower Protection in 10 European countries, p.11, 2009). The controversies that have arisen are the choice of where to make the revelations of information: inside or outside the organization

(Maarten De Schepper 2009) considers that public interest overrides the interest of the company when it comes to fraudulent practices of the company and any fraudulent practices disclosure should be made public.

In our opinion, the differentiation made by sectors would be the most appropriate. Thus, the public sector which provides public services that we are paying for should make the information public. Regarding the private sector, we believe that as long as a company has a well-founded ethical code with clear provisions, there is a certainty that they will take all the necessary internal measures against reported fraud and the problem remains within the organization.

#### **Obstacles faced by the whistleblowers**

The accountants, when they decide to make disclosure of information relating to fraudulent practices, they encounter a series of obstacles that lead them most often to stop the act. Whistleblowing often opens up a more difficult life and if one did not expect one's efforts to lead to any discernable outcome; it would not be worth (A. J. Evans 2008).

We divided these barriers into five categories, as follows:

##### **a) Fear of reprisals**

Fear of reprisals is a concern. The reprisals made over the employees are often indirect and subtle, very hard to prove to the authorities, the latest being mostly in the inability to take protective measures. (Schepper 2009). Glazer and Migdal say "most whistleblower-protection statutes do not provide remedies for retaliatory actions that fall short of dismissal - such as demotions, unwanted geographical transfers, failure to consider an employee for promotion, freezing an employee out of a decision-making role consonant with level of seniority, inordinate scrutiny and surveillance in and outside the workplace, and psychological pressures" (Hawse & Daniels 1995). Following a survey conducted in 2009 by Transparency International Romania we could see the following fact: even if legal protections are available, often there are limited mechanisms and the implementation of them is too weak to protect whistleblowers. For example, despite the fact that Romania has a very strong law with reference to the protection of whistleblowers from the public sector 40% of whistleblowers have suffered repercussions in one form or another as they have made the notification to the competent authorities.

Some common practices are listed by the US Project on Government Oversight:

- Take away job duties so that employee is marginalized;
- Take away on employee's national security clearance so that he or she is effectively fired;
- Blacklist an employee so that he or she is unable to find gainful employment;
- Conduct retaliatory investigations in order to divert attention from the waste, fraud or abuse the whistleblower is trying to expose;
- Question a whistleblower's mental health, professional competence or honesty;
- Set the whistleblowers by giving impossible assignment or seeking to entrap him or her;
- Reassign an employee geographically so he or she is unable to the job.(Banisar 2006)

“Reprisals can also take more subtle forms that may affect employment opportunities and working environment, such as awkward rosters, request for excessive documentation, petty harassment, harsh treatment by other employees and other forms of mobbing”. (Marie Chêne, 2009)

To all this, we would add some more serious repercussions such as threats, physical violence and even murder. The level of crime in each country is a decisive factor. Thereby, in countries with high level of crime the probability that an accountant to make disclosure is very low. “An example for the most brutal retaliation a whistleblower can receive is the story of Milan Vukelic, a civil servant who publicly accused officials in Bosnia-Herzegovina’s Republika Srpska of corruption. He was killed on November 7, 2007 when his car exploded. Milan Vukelic, a town planner for Banja Luka’s municipal authority, accused both his boss of corruption and the police of threatening him”. (Léderer & Hüttl 2002)

#### **b) Revenue loss**

Here we can include the fear of losing their job and thus the income, wage cuts, the costs that are relating to the legal proceedings which are arising from the processes that follow, the loss of invested capital due to depreciation of any shares (Schepper, 2009). If the entire family’s income will depend on the accounting, it is very likely that the accountant does not make any disclosure.

Also, another obstacle is large gains an accountant may have. In order not to risk losing gains, he will choose not to make any disclosure.

#### **c) Culture**

The culture of each person is influencing a lot its own behavior. “Beyond legal obligations, this is also significant cultural opposition to whistleblower in many cultures that needs to be overcome. Whistleblowers are seen negatively as “neaks”, “narks”, “informers” or “dobbers”. (David Banisar 2006). Un bun exemplu este România, țară cu trecut comunist, unde de cele mai multe ori, avertizorii de integritate sunt percepuți ca fiind informatori. A good example is Romania, a country under communist passed regime, where most of the times, whistleblowers were perceived to be informers<sup>1</sup>. “It is likely that many people do not even consider blowing the whistle, not only because of fear of retaliation, but also because of fear of losing their relationships at work and outside work”. (Léderer & Hüttl 2002)

Anonymous informants were used to maintain power over schemes such as the Inquisition, Nazi occupation, Soviet Union, era apartheid in South Africa. (Banisar 2006)

Another example, more topical this time, would be China where “whistleblowing may be deemed as undesirable and unethical behavior by any Chinese model employee. This is because it disturbs the relationship between employees and employers, particularly since loyalty is a significant factor in this relationship” (Stefen și alți, 2006).

“In Venezuela, many internal auditors believe that discovering fraud is not only career-limiting, but probably career-ending. If the subject of whistle-blowing came up in a discussion, the perspectives were neither positive nor negative. Some who had done whistle blowing were resentful about the outcome” (Stefen and others, 2006).

#### **d) Legislation**

The laws in each country leave their mark on whistleblowers. In many countries, there are laws which refer to the privacy of information, while the laws relating to whistleblowers are inadequate or nonexistent. Thus in many countries there are laws that provide duty of loyalty to the

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<sup>1</sup> *Alternativa la tacere: Protecția avertizorilor de integritate în 10 state europene este un studiu realizat de către Transparency International România în anul 2009. Transparency International Romania/Asociația Română pentru Transparență (TI-RO) este o organizație neguvernamentală care are ca prim obiectiv prevenirea și combaterea fenomenului corupției, la nivel național și internațional, în special prin activități de cercetare, documentare, informare, educare și sensibilizare a opiniei publice*

employer, secret documents, Libelle end Defamation, other law (Banisar 2006). "A breach of contract is very likely as many contracts include confidentiality clauses and *"all contracts of employment involve an implied "duty of fidelity" which requires honest, loyal and faithful service and forbids competition with the employer"* (Maarten De Schepper, 2009). In Romania, we can give as an example the obligation of expert accountants to maintain confidentiality of data they have access<sup>2</sup>.

Another issue is the anonymity of notifications. The anonymity offers a feeling of safety, but unfortunately many legislations do not take into account these kind of anonymous notifications "Most legislations exclude anonymous disclosures while providing for the protection of the whistleblower's identity" (Marie Chêne 2009). Romania is a good example; it is a country that does not take into account anonymous disclosures.

#### e) Psychological

"Personality is assumed to be one reason why some employees are more inclined than others to engage in whistleblowing behaviour and initiate actions aimed at solving organizational challenges" (Miceu, 2004, cited in Brita Bjorkelo și alții, 2010).

"Personality in the form of high extraversion, low agreeableness, and high domineering in interpersonal interaction predicts whistleblowing. Together, these findings paint a picture of the role of personality in relation to proactive behaviour in the form of whistleblowing". ( Bjorkelo și alți, 2010)

#### Solutions for overpassing the obstacles

##### a. Legislative measures

One of the handiest legislative measures is considered to be the adoption of specific legislation to protect whistleblowers. So as to remove these barriers and to encourage whistleblowers there have been globally and continentally concluded a series of treaties. In this article we will stop on two of them: the UN Convention against Corruption and Civil Law Convention adopted by the Council of Europe at the European level. Thus, Article 33 of UN Convention against Corruption says: "Each State shall consider incorporating into the legal system appropriate measures in order to provide protection against any unjustified treatment for any person who in its reports submitted information to the competent authorities of the various deficiencies noted in the organization based on reasonable grounds. (Léderer & Hüttl 2002)

At European level, the Council of Europe adopted the Civil Law Convention on Corruption which says that: "Each Member State shall provide in its internal law an appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and reporting in good faith their suspicion to responsible persons or authorities. (Lederer & Hüttl 2002)

Of an utmost importance are also the laws passed nationwide. On this respect, Romania adopted the Law no. 571/2004 with regards to the protection of personnel from public authorities, public institutions and other units which reports violations of the law. In Article 7 of this law is set out clearly how this law protects whistleblowers, but unfortunately those assumptions are applicable only to the public sector personnel. For those in the private sector it is helpful the Labour Code which prohibits unjustified dismissals.

"Best practice should protect whistleblowers from civil and criminal liability if they make a protected disclosure. In particular, this includes relieving whistleblowers from civil liability for defamation or breach of confidentiality and statutory secrecy provisions. Some WPL<sup>3</sup> provide absolute privilege to whistleblowers against defamation but not all of them override the duty of confidentiality. Whistleblowers should also be protected against sanction for misguided reporting". (Marie Chêne, 2009)

<sup>2</sup> Rule 35/2000, issued by CECCAR

<sup>3</sup> Whistleblower Protect Law

Another solution always could be the maintenance of confidentiality and anonymity for those who make disclosure of information, in this way ensuring a sense of security for the persons who make the complaint.

The term "anonymous" should be seen as being associated with an observation made through out a channel that cannot betray in any way the person who provides the information: a file containing the information sent with no return address, an untraceable call from a direct phone line, an email sent from a secure account, IT systems which ensure anonymity and prevent subsequent contacting, etc.. (Alternative to silence: Whistleblower Protection in 10 European countries, p.12, 2009). "By contrast, a confidential disclosure is where the recipient knows the identity of the person but agrees not to disclose it if and when the information is used" (Dehn and Calland 2004).

#### **b. Providing compensations**

Another encouraging measure is to offer compensations to whistleblowers. Compensation may be granted in case of immediate loss of salary, to cover the costs of civil proceedings and also for the stress on which the whistleblowers are being placed to (Maarten De Schepper 2009).

"Compensation is a protection that is given as a top-down compensation for job loss - which means the system failed to protect employees and the problem is classified as a work conflict. Often, these compensations are provided in the Labor Codes of each country. In Romania compensation consist of a return to work, pay compensation, restituo in full. "(Alternative to silence: Whistleblower Protection in 10 European countries, p.17, 2009)

In the UK, an award of £ 278.000 was given to a 56-years-old man who successfully argued that he would not be able to find another job (Banisar 2006)

#### **c. Offering rewards**

Offering rewards to encourage whistleblowers is rather a controversial issue even if it is a commonly way put in practice. Offering rewards for whistleblowers may have an undesirable effect. Under the impetus of the rewards offered employees can expedite the disclosure of information which may lead to erroneous views, which have no solid basis. Also, we must not forget that firstly, the warning regarding management's integrity should be primarily an act of loyalty. (Howse & Daniels, 1995). A number of Asian jurisdictions offer huge rewards to those who reveal corruption. As an example here we could give South Korea, where anti-corruption law allows for individuals who reveal corruption to receive up to 20% of the amount recovered as a result of denunciations made. (Lederer & Hüttl 2002)

Hawse & Daniels (1995) highlighted very well the problem of rewards. When there is a disclosure of information on illegal practices within the company, the person in discussion is taking high risks, as follows: once the case reached the courts and there is not sufficient evidence, the whistleblower's reputation will have to suffer. A counterargument made by Hawse & Daniels (1995) themselves is that usually awards are made as a percentage of the amount recovered thus the new problem is as follows: although the employee has acknowledged the illegality, he will not report it but will wait for the amount of the irregularities to grow until the rewards will be the greatest. The same authors point out that any delay in reporting may cause destruction of evidence or some other integrity warning to take it forward and thus collect the rewards. Surprisingly accountants are unlikely to blow the whistle for a cash reward and, furthermore, are unlikely to whistleblower externally. (Shawver & Clements 2008)

In our opinion offering rewards is not a healthy practice for the organization because there is a risk that a whistleblower will turn into an informant and the informant's only goal is to obtain rewards. Any disclosures of fraudulent practice should be done under the impetus of the feelings of morality and loyalty to the organization where the employee belongs. Yes, the whistleblower is facing some risks but given the example shown above, about the risk of there not being available sufficient evidence for a trial, the lack of reward in the middle will lead to the conviction of whistleblowers and his only fault will be he's just having a highly developed sense of moral. But if

there is a reward in the middle, he will be accused of being a bounty hunter which will bring him even a greater fall into disfavor.

**d. Other measures**

Steven H. and others give us some recommendations to overcome the obstacles which a warning of integrity might encounter. Recommendations include encouraging employees to communicate their concerns about ethics within the organization by giving them the assurance that they will be heard and will not suffer any reprisals. (Appelbaum and others, 2006)

Protecting the employee's status - the warnings usually have several implications for the integrity and the professional losses may be large. "Whistleblowers should be protected from dismissals, suspensions, disciplinary and other forms of workplace sanctions and discriminations. Protection should be broad enough to cover any retaliation means, including more subtle forms of discriminations and petty harassment". (Marie Chêne, 2009)

Another solution is to encourage private companies to adopt codes of conduct and ethics so as to provide tools and procedures for the employee when he finds some illegal practices in order to encourage disclosures of fraudulent practice.

## **Conclusions**

Many accountants are very reticent regarding the disclosure of information. Most reasons are related to fear of suffering reprisals both in professional and personal life. They should, however, overcome these prejudices and to recognize the importance of disclosure. The reasons for accountants should reassess whistleblowing are:

- Consumers, shareholders and communities are left at risk with neither the information nor the opportunity to protect their own interests;
- Unscrupulous managers or employees are given a reason to believe that 'anything goes';
- Those in charge are denied the chance to look into concerns about wrongdoing and to avert real problems;
- Debates and reforms tend to focus on ways to improve the system, rather than on the conduct of the humans who have to make it work. (Dehn and Calland 2004)

Shawver & Clements (2008) argue that the accountant's inclination is to make revelations related to illegal practices within the organization. The biggest obstacle in making this disclosure is the fear of being fired. If they were guaranteed that they will not be dismissed or that they will preserve their identity anonymous, the accountants would be willing to make disclosures. As a result, the organizations which really want to support them should take steps in this direction by which accountants might not suffer any reprisals. The measures may include codes of ethics within the company, creating a hotline or e-mail throughout there could be made any anonymous complaints.

As we all have seen until now, for every obstacle there is a solution and behind all the obstacles, there is a person. We are the people standing behind them; therefore the change must come from each of us. We need to know and understand this practice before giving a verdict. It is to our benefit.

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