

WHISTLEBLOWER WHISTLEBLOWER? *whistleblower!*





1.0

What is Whistleblowing?

In empirical research, whistleblowing is frequently defined as "the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action".

Whistleblowing can be an act of free speech, an anti-corruption tool, and an internal management dispute mechanism. This has led to several different definitions. One of the first modern uses was by US consumer activist Ralph Nader in 1971, who described it as "An act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity."

2.0



The term "whistleblower" derives from the practice of police officers, who would blow their whistles when they noticed the commission of a crime. The whistle would alert other law enforcement officers and the general public of the danger.

A whistleblower could be a former employee or a present member of an organization, mainly belonging to a government agency or a business organization. The person reporting misconduct or illegalities to an entity holding power presumed willingness to take counteractive actions. The misconduct generally refers to threats to public interests, fraud, health and safety violations, corruption and regulatory violations.

A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually, this person would be from that same organization.





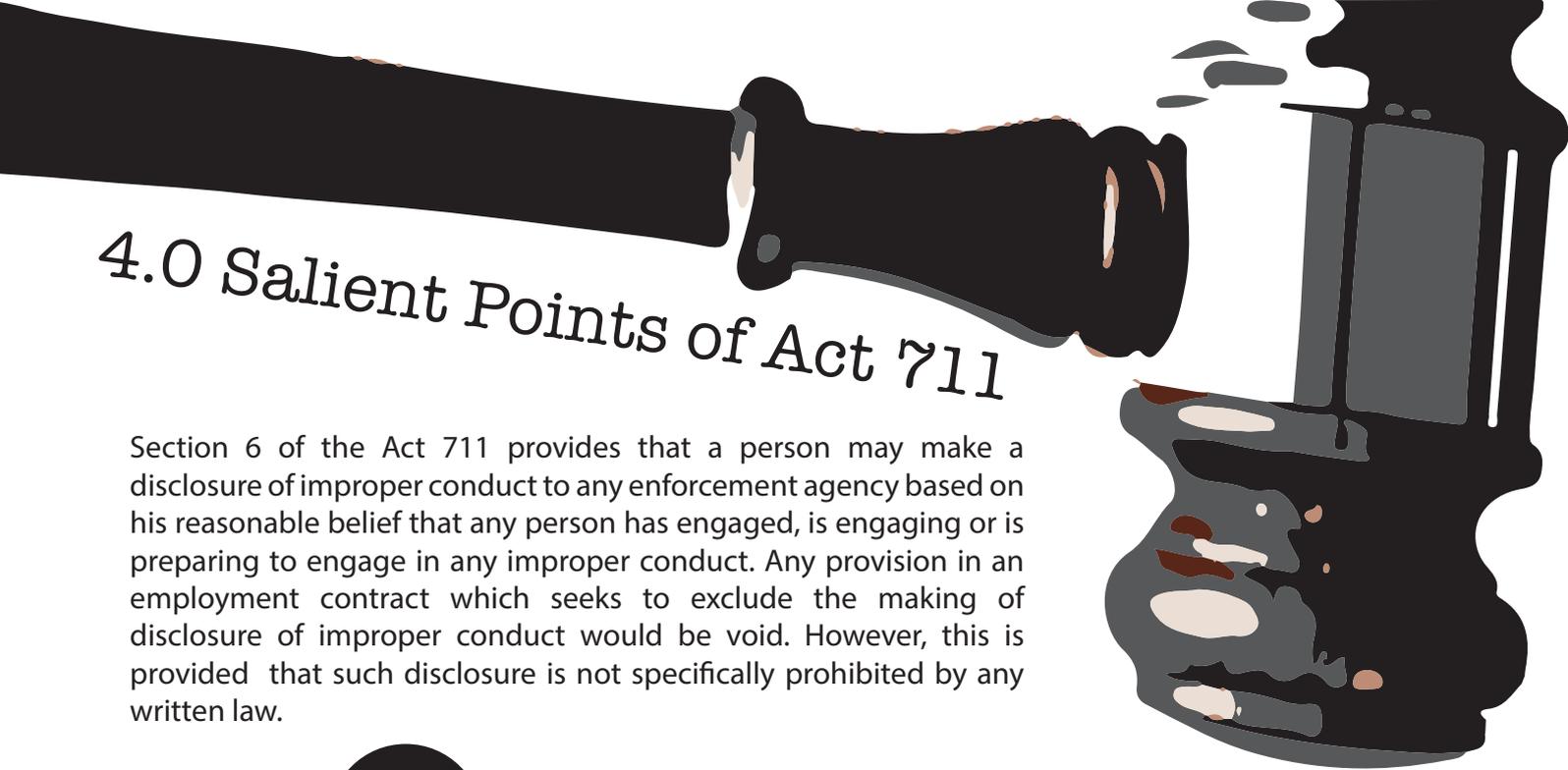
3.0

POSITION IN MALAYSIA

With the enactment of the Whistleblower Protection Act 2010 (Act 711), the officers of a company or any other person who provides information as to the misfeasance or wrongdoing of any company or its directors are entitled to wider protection under this Act.

The Act 711 applies generally to whistleblowers who disclose information relating to the wrongdoings in the private or public sector. The enactment of the Act 711 is part of the efforts taken by Malaysia to fulfill its obligations under the United Nation Convention against Corruption. The Act 711 came into force on 15 December 2010 and contained all together 27 sections.





4.0 Salient Points of Act 711

Section 6 of the Act 711 provides that a person may make a disclosure of improper conduct to any enforcement agency based on his reasonable belief that any person has engaged, is engaging or is preparing to engage in any improper conduct. Any provision in an employment contract which seeks to exclude the making of disclosure of improper conduct would be void. However, this is provided that such disclosure is not specifically prohibited by any written law.

4.1

There are three types of protection provided to a whistleblower as laid down in Section 7 Act 711

1.1

First, any information about the improper conduct and personal details of the whistleblower would be kept confidential.

2.2

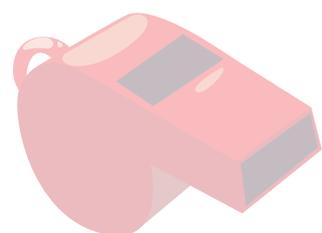
A whistleblower is also entitled to immunity from any civil and criminal action for making the disclosure of information.

3.3

No person should take any detrimental action (action causing injury, loss or damage, harassment or interference with the lawful employment or livelihood) against him or any person related or associated with him due to his disclosure of information.

The full scheme of whistleblower protection begins with Section 7 and ends with Section 10. Three areas of protection typically cover confidential information, immunity from civil and criminal action and protection against detrimental action. A "detrimental action" includes:

- (i) action causing injury, loss or damage;
- (ii) intimidation or harassment;
- (iii) interference with the law, employment or livelihood of any person including discrimination, discharge, demotion, suspension, disadvantage, termination or adverse treatment in relation to a person's employment, career, profession, trade or business or taking of disciplinary action.



4.2

A whistleblower may complain to any enforcement agency if he or any person related to or associated with him suffers from any detrimental action in breach of Section 10(1). A person is deemed to have taken a detrimental action against a whistleblower if:-

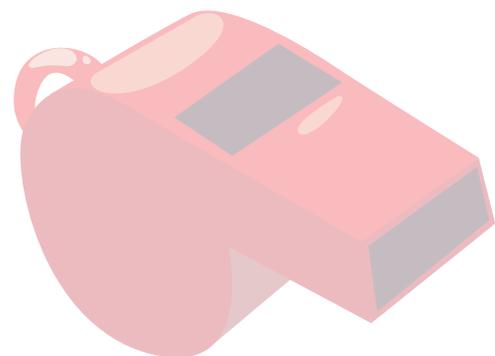
(i)

The reason behind his action is due to the disclosure of improper conduct or his belief that the whistleblower has made or intends to make disclosure of improper conduct; or.

(ii)

He incites or permits another person to take or threaten to take detrimental action against the whistleblower due to the disclosure of improper conduct. In any proceedings, the burden lies with the defendant to prove that the detrimental action taken or intended to be taken against the whistleblower or any person related to or associated with him is not in reprisal for a disclosure of improper conduct.

Section 10(6) mentions that a person guilty of taking detrimental action against a whistleblower shall be liable to a fine not exceeding RM100,000 or imprisonment for a term not exceeding 15 years or to both.



4.3

Nonetheless, the whistleblower protection under the Act 711 may be revoked by the enforcement agency in six circumstances under Section 11(1) Act 711 as follows:

(a)

The whistleblower himself has participated in the improper conduct disclosed.

(b)

The whistleblower willfully made in his disclosure of improper conduct a material statement which he knew or believed to be false or did not believe it to be true.

(c)

The disclosure of improper conduct is frivolous or vexatious.

(d)

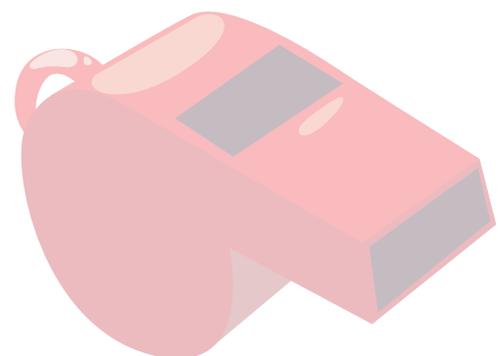
The disclosure of improper conduct principally involves questioning the merits of government policy, including policy of a public body.

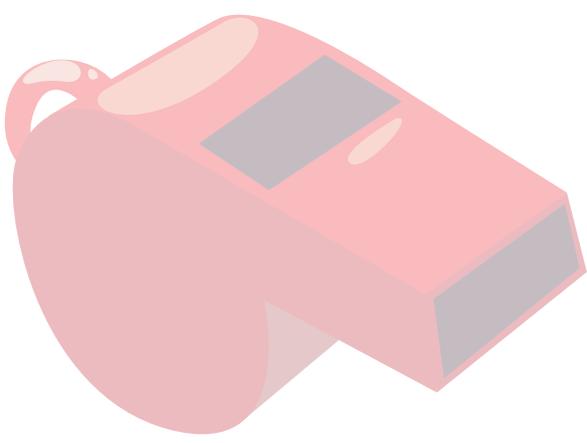
(e)

The disclosure of improper conduct is made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

(f)

The whistleblower, in the course of making the disclosure or providing further information commits an offence under the Act 711. The enforcement agency must give a written notice to the whistleblower if the whistleblower protection is revoked. Any whistleblower aggrieved by the enforcement agency's decision to revoke his protection may refer the decision to a court for determination.

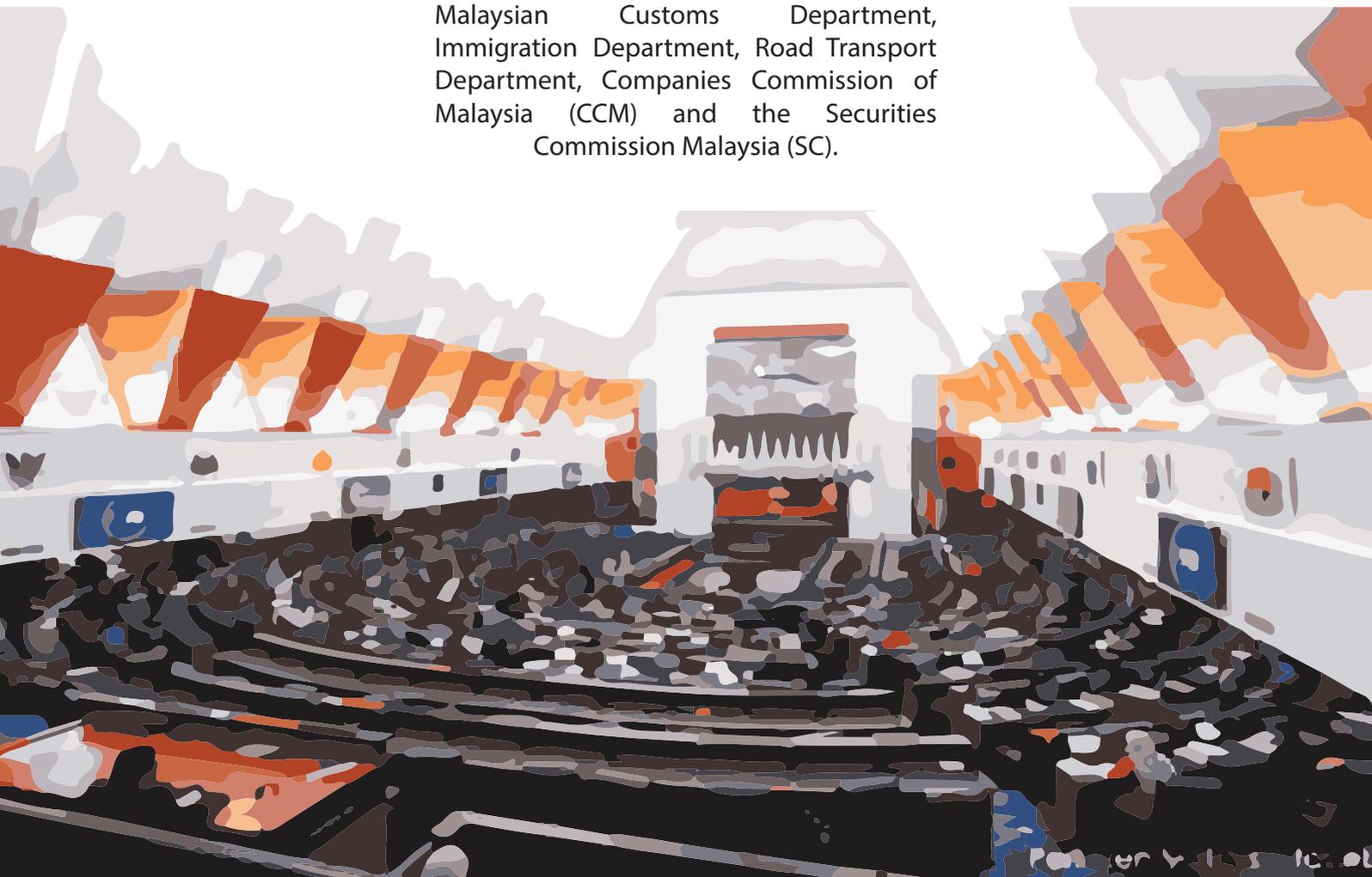




5.

After the enforcement of the Whistleblower Protection Act 2010

On 26th April 2012, in a press conference, Deputy Minister in the Prime Minister's Department Datuk Liew Vui Keong mentioned as follows: Thirty-two informants from the private and civil sectors have been granted protection under the Whistleblower Protection Act 2010. He said that from January to March 31 this year, there have been 1,100 exposures on improper conduct under the act. "Last year, a total of 1,690 cases of improper conduct were exposed," said Liew in reply to Datuk Maijol Mahap at the Dewan Negara today. He said seven government agencies had implemented the Act: the Police, Malaysian Anti-Corruption Commission (MACC), Royal Malaysian Customs Department, Immigration Department, Road Transport Department, Companies Commission of Malaysia (CCM) and the Securities Commission Malaysia (SC).





6 *Key Takeaways*

By revealing concealed information that is critically important to the good, whistleblowers provide an opportunity to address public interest concerns before harm is done. Yet, employees have the least incentives to report wrongdoing and, if they do so, often do it at considerable costs to their careers, personal and professional lives. Inquiries into tragedies resulting in losses of lives often reveal that employees had known about health or safety risks, potential environmental problems, fraud, and corruption but were too afraid to speak up out of fear of reprisals. Further, it also entirely depends on the culture of employees to overcome the attitude of remaining silent when faced with problems from employers.