



CHARTERED
SECRETARIES
特許秘書

Guidance Note

A practical guide to good governance

The Hong Kong Institute of Chartered Secretaries
Chartered Secretaries. More than meets the eye.

Whistleblowing Toolkit

FOREWORD

"Do corporations have the ability to effect meaningful changes in values?" I believe the answer to this difficult question is in the affirmative, not only because good business ethics is an integral part of good governance, but more importantly for the reason that good business ethics, and measures to promote good business ethics, do establish and influence shifts of attitudes.

The collapse of big names like Enron, WorldCom and Lehman Brothers suggests that the nature and scope of risks confronting a company are expanding. Globalisation of business and technological advances have meant that businesses are being transacted nowadays in an unprecedented way, with new opportunities for fraud and potential quantum of losses arising from fraud or other organisational failures increasing. In this regard, the formulation and implementation of an effective whistleblowing policy help promote an ethical organisational culture premised on trust, openness and accountability. Such a policy should be welcomed as a part of a company's business integrity strategy and an opportunity to encourage employees to play their part in achieving the overall objects of the company.

I am pleased to see that The Hong Kong Institute of Chartered Secretaries, with its continuous dedication and commitment to the promotion of good corporate governance, has compiled this Whistleblowing Toolkit. I believe this toolkit provides an excellent tool for the formulation of an effective whistleblowing policy and in turn assists Company Secretaries and other officers of a company in embracing whistleblowing as an internal control mechanism.

Ada Chung, JP, FCIS FCS
Registrar of Companies
1 December 2010

INTRODUCTION

The research report *Business Ethics – A Path to Success* issued in September 2007 has, among other things, the following recommendation:

"It is now time for Hong Kong to seriously consider institutionalising whistleblowing and enacting a whistleblower protection law in order to catch up with the international arena. While this is underway, the regulator should, as an initiative to enhance the corporate governance in listed companies, encourage these companies to put in place a whistleblowing policy and relevant mechanisms by making the issuing of a whistleblowing policy a code provision in the CG Code."¹

As a follow up to this recommendation, this Guidance Note provides, in four appendices, some tools to assist companies to put in place such a policy.

Appendix A	Whistleblowing – A Refresher
Appendix B	Whistleblowing Policy Checklist
Appendix C	Whistleblowing Policy Template Annex I – Whistleblowing Report Form Annex II – Investigation Procedures Flowchart
Appendix D	Whistleblowing Policy Practice Tips

For convenience, this Guidance Note is prepared from a listed company's standpoint. However, the materials are meant to be generic and of use to other organisations wishing to promote and cultivate a whistleblowing culture. In this regard, references to a company shall include listed company, private company, professional services firm, non-government organisation, non-profit-making or charitable body; an audit committee shall include risk management and compliance committee or other body serving similar functions. Readers are encouraged to adapt the materials to suit their organisation's needs and circumstances.

As with all templates and precedents, we will endeavour to update and revise the materials in this Guidance Note as we move along. To this end, we welcome any comments you might have on this Guidance Note.

¹ The Hong Kong Institute of Chartered Secretaries and Hong Kong Shue Yan University, *Business Ethics – A Path to Success*, September 2007. http://www.hkics.org.hk/index.php?_room=10&category_id=57&searchDone=1&_action=detail&_page=3.

APPENDIX A WHISTLEBLOWING – A REFRESHER

This is a quick refresher on the subject of whistleblowing. For details, please refer to *Business Ethics – A Path to Success*.²

WHISTLEBLOWING

The term 'whistleblowing' could mean "alerting the authorities to information which reasonably suggests there is serious malpractice, where that information is not otherwise known or readily apparent and where the person who discloses the information owes a duty (such as an employee's) to keep the information secret, provided that wherever practicable he or she has raised the matter within the company first."³

The emphasis seems to be encouraging people to raise the matter within the company first.

Cases of serious malpractice reported typically relate to health and safety, financial mismanagement or corruption, environmental matters or criminal activities that affect, or might affect, people other than just the whistleblower.

AUTHORITY

There is no mandatory requirement under the Main Board Listing Rules for listed companies to issue a whistleblowing policy. A reference for listed companies to put in place arrangements for employees to report, in confidence, concerns about possible improprieties can be found in C.3.7, *Code on Corporate Governance Practices*, Appendix 14 to the Main Board Listing Rules:

The terms of reference of the audit committee should also require the audit committee:

- (a) to review arrangements by which employees of the issuer may, in confidence, raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for the fair and independent investigation of such matters and for appropriate follow-up action;⁴

The wording is similar to the relevant code provision contained in the UK *Corporate Governance Code*.⁵

Also, in some circumstances, employees have a legal obligation to report certain types of wrongdoing. For example, within the anti-money laundering regime, the law states that when a person knows or

² *Business Ethics – A Path to Success*, *op. cit.*, 36 – 42.

³ Guy Dehn, *Whistleblowing, Fraud and the European Union*, report written for the European Commission (1996). Quoted in *The Protection of Whistle-blowers*, Committee on Legal Affairs and Human Rights report to Parliamentary Assembly, Council of Europe, Doc. 12006, 14 September 2009.

<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12006.htm>.

⁴ C.3.7, *Code on Corporate Governance Practices*, Appendix 14, Main Board Listing Rules.

http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/appendix_14.pdf.

⁵ "The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action." C.3.4, *The UK Corporate Governance Code*, June 2010, 20. <http://www.frc.org.uk/corporate/ukcgcode.cfm>.

suspects that any property is proceeds of drug trafficking or a crime, or terrorist property, or was used in connection with drug trafficking, a crime or terrorist act, or is intended to be used in drug trafficking, a crime or terrorist act, he or she should report his or her knowledge or suspicion to the Joint Financial Intelligence Unit or a designated officer within the company.⁶

BENEFITS

For the following reasons, some listed companies and organisations choose to implement a whistleblowing policy:

- (a) Set clear procedures for all parties to follow;
- (b) Make it more likely that concerns will be raised internally;
- (c) Enable the company/organisation to remedy a wrongdoing before serious damage is caused;
- (d) Enable the company/organisation to deal with the situation without adverse media publicity;
- (e) Act as an early warning system thus reducing the risk of involvement by regulators;
- (f) Enhance the reputation of the company/organisation;
- (g) Help to nurture a good company/organisation culture.

⁶ See <http://www.jfiu.gov.hk/eng/requirement.html>. The relevant ordinances are: the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organized and Serious Crimes Ordinance and the United Nations (Anti-Terrorism Measures) Ordinance. See also The Hong Kong Institute of Chartered Secretaries, *Anti-Money Laundering and Counter-Terrorist Financing Guidelines*. [http://www.hkics.org.hk/media/publication/attachment/2141_AML-version1-2ndEdition-\(Feb-09\).pdf](http://www.hkics.org.hk/media/publication/attachment/2141_AML-version1-2ndEdition-(Feb-09).pdf).

**APPENDIX B
WHISTLEBLOWING POLICY CHECKLIST**

Policy	Definition of whistleblowing	<input type="checkbox"/>
	Background to whistleblowing	<input type="checkbox"/>
	Importance to the company	<input type="checkbox"/>
Responsibility	Overall responsibility for the policy and its implementation: audit committee	<input type="checkbox"/>
Scope of Whistleblowing Policy	Staff and others covered by the policy	<input type="checkbox"/>
Reporting Procedures	Report in good faith, with reasonable grounds, and not for personal gain	<input type="checkbox"/>
	Ways to make the report	<input type="checkbox"/>
	Name and contact particulars of senior officer to receive report	<input type="checkbox"/>
	Option to bypass normal lines of management: report to Chairman of audit committee or an external agency, as warranted	<input type="checkbox"/>
Confidentiality	Company to respect confidentiality	<input type="checkbox"/>
	Whistleblower to respect confidentiality	<input type="checkbox"/>
	Circumstances company has to disclose whistleblower identity	<input type="checkbox"/>
	Company's view on anonymous reports	<input type="checkbox"/>
Support for Whistleblowers	Whistleblower not disadvantaged (even if the report proves to be unsubstantiated)	<input type="checkbox"/>
	Whistleblower employment status not affected	<input type="checkbox"/>
	Victimisation or harassment by others not tolerated by the company with disciplinary actions against persons involved in such activities	<input type="checkbox"/>
Investigation Procedures	Action the company will take to investigate the report	<input type="checkbox"/>
	Parties to handle investigation	<input type="checkbox"/>
	Company to respect independence of investigator	<input type="checkbox"/>
	Feedback whistleblower will receive during the process	<input type="checkbox"/>
	Timescales for investigation	<input type="checkbox"/>
	Confidentiality owed to staff involved in the matter being investigated	<input type="checkbox"/>
	Possible outcomes of investigation	<input type="checkbox"/>
	Procedures to follow if whistleblower is not satisfied with the outcome of investigation	<input type="checkbox"/>
False Reports	Company's views on false reports	<input type="checkbox"/>
	Disciplinary actions against person making false reports	<input type="checkbox"/>
Corrective Actions	All reports to be reviewed by audit committee	<input type="checkbox"/>
	Audit committee to recommend corrective actions to the Board	<input type="checkbox"/>
Monitoring	Statement that policy will be monitored and reviewed	<input type="checkbox"/>
	Ensure independence of audit committee	<input type="checkbox"/>

HKICS Whistleblowing Policy Checklist
(December 2010)

**APPENDIX C
WHISTLEBLOWING POLICY TEMPLATE**

Date of Policy:
Issue Number:
Date of Policy Review:

POLICY

We are committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect and encourage you our employees who have concerns about any suspected misconduct or malpractice within the company to come forward and voice those concerns.

While we could not guarantee that we will handle the report in the way you might wish, we will endeavour to respond to your concerns fairly and properly.

SCOPE

This policy applies to employees at all levels and divisions. It does not apply to independent contractors such as self-employed workers who run a profession or business on their own account.

PROTECTION AND SUPPORT FOR WHISTLEBLOWERS

Persons making appropriate complaints under this policy are assured of protection against unfair dismissal, victimisation or unwarranted disciplinary action, even if the concerns turn out to be unsubstantiated.

Persons who victimise or retaliate against those who have raised concerns under this policy will be subject to disciplinary actions.

RESPONSIBILITY FOR IMPLEMENTATION OF POLICY

The Board's audit committee⁷ has overall responsibility for this policy, but has delegated day-to-day responsibility for overseeing and implementing it to the [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance]. Responsibility for monitoring and reviewing the operation of the policy and any recommendations for action resulting from investigation into complaints lies with the audit committee.

Management must ensure that all employees feel able to raise concerns without fear of reprisals. All employees should ensure that they take steps to disclose any misconduct or malpractice of which they become aware. If you have any questions about the contents or application of this policy, you should contact the [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance].

MISCONDUCT AND MALPRACTICE

It is impossible to give an exhaustive list of the activities that constitute misconduct or malpractice

⁷ Instead of the audit committee, it could be its equivalent such as the risk management and compliance committee.

but, broadly speaking, we would expect you to report the following:

- (a) A criminal offence;
- (b) A failure to comply with any legal obligations;
- (c) A miscarriage of justice;
- (d) A financial impropriety;
- (e) An action which endangers the health and safety of any individual;
- (f) An action which causes damage to the environment;
- (g) The deliberate concealment of information concerning any of the matters listed above.

While we do not expect you to have absolute proof of the misconduct or malpractice reported, the report should show the reasons for the concerns. If you make a report in good faith then, even if it is not confirmed by an investigation, your concerns would be valued and appreciated.

FALSE REPORT

If you make a false report maliciously, with an ulterior motive, without reasonable grounds that the information in the report is accurate or reliable, or for personal gain, you may face disciplinary action, including the possibility of dismissal.

MAKING A REPORT

You can make a report verbally or in writing in the standard report form attached to this policy as Annex I. We would normally expect you to raise your concerns internally to your line manager (or his or her superior) within the department.

If you feel uncomfortable doing this, for example, your line manager has declined to handle your case or it is the line manager who is the subject of the report, then you should contact [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance].

If the report is extremely serious or in any way involves the [designated senior officer], you should report it directly to the Chairman of the Board's audit committee.

In case you feel uncomfortable reporting it internally, you could report to [independent person or organisation with contact details], who is trained in dealing with such matters.

In the report, you should provide full details and, where possible, supporting evidence.

CONFIDENTIALITY

We will make every effort to keep your identity confidential. In order not to jeopardise the investigation, you should also keep the fact that you have filed a report, the nature of your concerns and the identity of those involved confidential.

There may be circumstances in which, because of the nature of the investigation, it will be necessary to disclose your identity. If such circumstances exist, we will endeavour to inform you that your identity is likely to be disclosed. If it is necessary for you to participate in an investigation, the fact that you made the original disclosure will, so far as is reasonably practicable, be kept confidential. However, it is also possible that your role as the whistleblower could still become apparent to third parties during investigation.

Equally, should an investigation lead to a criminal prosecution, it may become necessary for you to provide evidence or be interviewed by the authorities. In these circumstances, we will, once again, endeavour to discuss with you the implications for confidentiality.

You should, however, know that in some circumstances, we may have to refer the matter to the authorities without prior notice or consultation with you.

ANONYMOUS REPORT

We respect that sometimes you may wish to file the report in confidence. However, an anonymous allegation will be much more difficult for us to follow up simply because we will not be able to obtain further information from you and make a proper assessment.

We generally do not encourage anonymous reporting and encourage you to come forward with your concerns.

INVESTIGATION PROCEDURES

For quick reference, please refer to the flowchart in Annex II.

We will acknowledge receipt of your report within [number] working days confirming that:

- Your report has been received;
- The matter will be investigated;
- Subject to legal constraint, you will be advised of the outcome in due course.

A [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance] will be appointed to manage the report.

We will evaluate every report received to decide if a full investigation is necessary. If an investigation is warranted, an investigator (with suitable seniority and without previous involvement in the matter) from the internal audit or compliance department will be appointed to look into the matter.

Where the report discloses a possible criminal offence, we will refer the matter to the audit committee. The audit committee, in consultation with our legal advisers, will decide if the matter should be referred to the authorities for further action.

As stated under the section 'Confidentiality', in most cases, we will endeavour to discuss with you before referring a matter to the authorities. However, in some situations, we may have to refer the matter to the authorities without prior notice or consultation with you.

Please note that once the matter is referred to the authorities, we will not be able to take further action on the matter, including advising you of the referral.⁸

⁸ For example, section 30 of the Prevention of Bribery Ordinance (Cap. 201) would prevent us from disclosing to the public that a particular person is the subject of an investigation by the Independent Commission Against Corruption. http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/D2A2067867B4C4FDC82564830028365E?OpenDocument. Within the anti-money laundering regime, section 25A(5) of the Organized and Serious Crimes Ordinance (Cap. 455) provides that following the filing of a suspicious transaction report to an authorised officer or to the appropriate person in accordance with the procedure established by employers, it is an offence for a person to disclose to any other person any matter which is likely to prejudice any investigation which might be conducted. <http://www.hkii.org/hk/legis/en/ord/455/s25a.html>. See also Tipping-off, *Anti-Money Laundering and Counter-Terrorist Financing Guidelines*, *op. cit.*, 10.

You may be asked to provide more information during the course of the investigation.

The investigation report will be reviewed by a code of conduct committee comprising senior officers such as the Company Secretary, Chief Internal Auditor, Human Resources Director or Head of Compliance.⁹

Possible outcomes of the investigation:

- (a) The allegation could not be substantiated;
- (b) The allegation is substantiated with one or both of the following:
 - (i) Corrective action taken to ensure that the problem will not occur again;
 - (ii) Disciplinary or appropriate action against the wrongdoer.

A final report, with recommendations for change (if appropriate), will be produced to the audit committee. The audit committee will review the final report and make recommendations to the Board.

You will receive in writing the outcome of the investigation. Because of legal constraints, we will not be able to give you details of the action taken or a copy of the report.

Subject to the nature and complexity of the matter, we expect to complete the investigation and provide you with the outcome in [number] months.

If you are not satisfied with the outcome, you could raise the matter again with the [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance]. You should make another report explaining why this is the case. If there is good reason, we will investigate into your concerns again.

You could, of course, raise the matter with an external authority such as a regulator or a law enforcement agency. Please ensure that you have sufficient evidence to support your concerns. Before reporting your concerns externally, we encourage you to discuss with [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance].

You could also consult your legal advisers.

MONITORING THE WHISTLEBLOWING POLICY AND PROCEDURE

The use and effectiveness of this whistleblowing policy will be monitored and reviewed regularly by [designated senior officer: Company Secretary, Chief Internal Auditor or Head of Compliance].

HKICS Whistleblowing Policy Template
(December 2010)

⁹ For other organisations, it could be a board, committee or body serving similar functions.

**ANNEX I
WHISTLEBLOWING REPORT FORM
CONFIDENTIAL**

We are committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees who have concerns about any suspected misconduct or malpractice within the company to come forward and voice those concerns.

It is recognised that in most cases the person raising concerns will wish to be dealt with on a confidential basis. All reasonable efforts will therefore be made to avoid revealing the person's identity.

If you wish to make a written report, please use this report form.

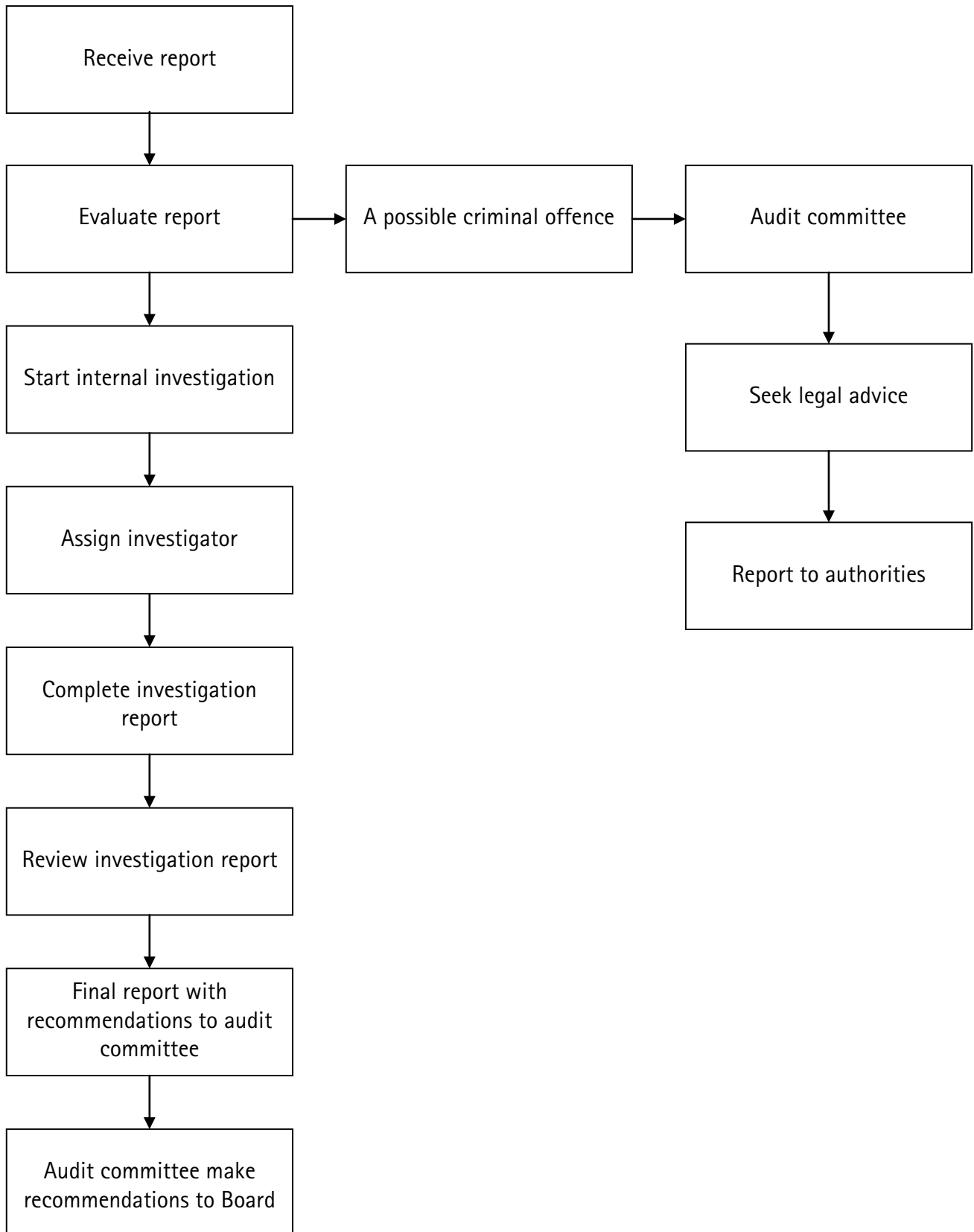
Once completed, this report becomes confidential.

<p>Your Name/Contact Telephone Number and Email</p> <p>We encourage you to provide your name with this report. Concerns expressed anonymously are much less powerful but they will be considered as far as practicable.</p>	<p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Tel No: _____</p> <p>Email: _____</p> <p>Date: _____</p>
<p>The names of those involved (if known):</p> 	
<p>Details of concerns:</p> <p>Please provide full details of your concerns: names, dates and places and the reasons for the concerns (continue on separate sheet if necessary) together with any supporting evidence.</p> 	

CONFIDENTIAL

HKICS Whistleblowing Report Form
(December 2010)

ANNEX II
INVESTIGATION PROCEDURES



HKICS Whistleblowing Investigation Procedures Flowchart
(December 2010)

APPENDIX D
WHISTLEBLOWING POLICY PRACTICE TIPS

1	Promote business ethics within the company
	Whistleblowing policy works best when employees understand what conducts are unacceptable
2	Promote a culture of whistleblowing
	Make it clear to management and employees alike that it is both safe and acceptable for employees to raise concerns about misconduct and malpractice
3	Consult when designing procedures and rules on reporting concerns
	If there is no policy in place, use a consultative process to generate these rules and procedures
	If there is already an existing policy in place, consult employees about any changes the company is about to make
4	Respond positively to reports
	Respond within the agreed timescale
	Show positive results to reports
5	Respect the confidentiality of whistleblower
	Use all reasonable means to keep the identity of the whistleblower confidential
6	Respect the independence of the whistleblowing process
	Ensure independence of investigator
	Ensure independence of audit committee
7	Protect whistleblower
	Take all reasonable steps to ensure that whistleblower will not be victimised
8	Cross reference with other policies
	Amend company's confidentiality policy (in the employment contract) to provide for the making of a protected disclosure under the whistleblowing policy
	Include in the disciplinary procedure that making a report maliciously is a misconduct
	Include in the disciplinary procedure that victimising a whistleblower is a misconduct
9	Assign officer of suitable seniority, such as Company Secretary, Chief Internal Auditor or Head of Compliance, to receive confidential report
	Evaluate your company structure and decide on a senior person to whom confidential disclosures can be made
	The person nominated must have the authority and determination to act if concerns raised are not properly dealt with by immediate line management
10	Educate line management on response
	Ensure line managers understand how to react to a concern raised
11	Introduce and promote the whistleblowing policy
	Notify all employees by memo or circular, identify the date of implementation and give employees an opportunity to review the policy
	Enforce the policy
12	Policy review
	Set a date to evaluate the effectiveness of the policy, perhaps annually, and nominate a person, such as Company Secretary, Chief Internal Auditor or Head of Compliance, to take responsibility for the exercise

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Names below are in alphabetical order:

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