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WHISTLEBLOWERS

DEFINITION



WHO CAN BE GENERALLY
CONSIDERED A WHISTLEBLOWER?

- ✓ Person that, in good-faith, reports to the authorities acts such as corruption, abuse of power, bribery, etc.
- ✓ Not necessarily a person that has an employment relation with the reported entity.

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Source: <https://www.fedsec.gov/whistleblowers>
uso do sistema, e os dados de acesso, comentários,
próximo de denúncia, etc. (https://www.fedsec.gov)

WHISTLEBLOWERS

DEFINITION



WHO IS CONSIDERED A
WHISTLEBLOWER BY THE SEC?

- ✓ Person that provides (original) information pursuant to a possible violation of the federal securities laws that has occurred, is ongoing, or is about to occur.
- ✓ Person that possesses a reasonable belief that the information he/she is providing relates to a possible securities law violation.
- ✓ Necessarily, an individual. A company or another entity is not eligible to be a whistleblower
- ✓ Person that provides information through the Commission's website, through mailing or faxing, declaring under penalty of perjury at the time of submission that his/hers information is true and correct to the best of his/hers knowledge and belief.

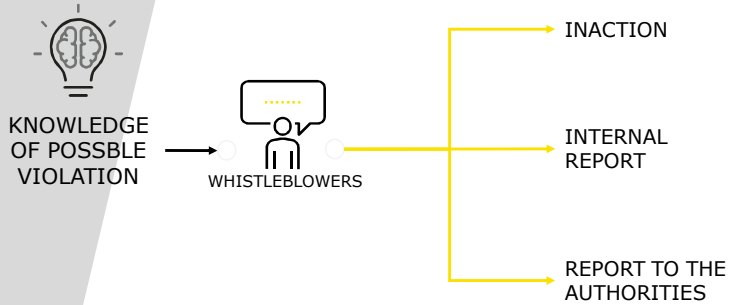
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Source: <https://www.sec.gov/about/whistleblowers2011.pdf>

WHISTLEBLOWERS

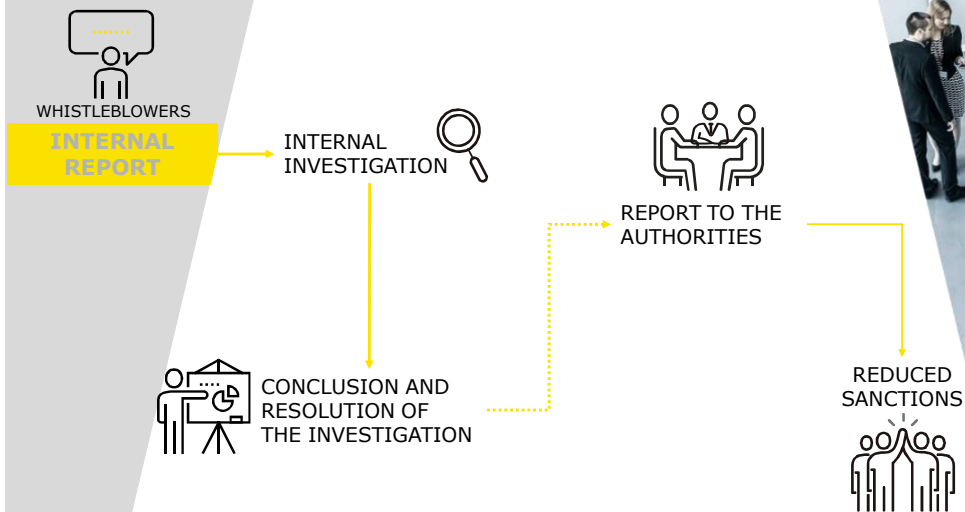
POSSIBILITIES OF ACTION



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WHISTLEBLOWERS

POSSIBILITIES OF ACTION



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WHISTLEBLOWERS

POSSIBILITIES OF ACTION

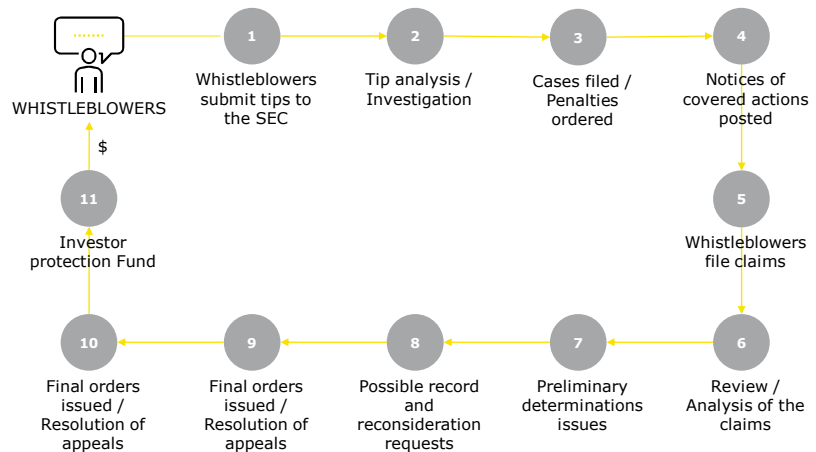


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WHISTLEBLOWERS

UNITED STATES OF AMERICA AS A PARADIGM

In the **United States of America**, the subject is explored in greater depth and there is already a **provision of a reward if the tip** provided by the whistleblower to the Securities and Exchange Commission **in fact gives rise to a sanction imposed on the offending company**.



Source: <https://www.sec.gov/page/whistleblower-100million>

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WHISTLEBLOWERS

UNITED STATES OF AMERICA
AS A PARADIGM

UNITED STATES
OF AMERICA
SECURITIES AND
EXCHANGE COMMISSION

The presented system, in the United States of America, between 2011 and 2017, resulted on **more than 22,000 tips** on potential irregularities being received by the Securities and Exchange Commission, being that by 2017, the program **generated more than \$1 billion in financial rewards** and **more than \$300 million of rewards to whistleblowers**.



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WHISTLEBLOWERS

IN LATIN AMERICA



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WHISTLEBLOWERS

LATIN AMERICA



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WHISTLEBLOWERS

BRAZIL: INTERNATIONAL COMMITMENT



UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

The UNCAC, the only legally binding international anticorruption multilateral treaty, was adopted by Brazil in 2005.

This convention provides that all adhering parties should consider the adoption of appropriate measures that guarantee the protection against unfair treatment to individuals that report, in good-faith, the wrongdoings set forth within the UNCAC (such as, but not limited to corruption) to the authorities.

INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC)

The first international convention to address the question of corruption was adopted by Brazil in 2002.

The IACAC provides that all adhering parties should create systems to protect public agents and private individuals that report, in good-faith, corruption acts, being that their identity shall also, as a rule, be protected.



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WHISTLEBLOWERS

BRAZIL: PREVIOUS INITIATIVES



LAW 13.608, 2018

This law regulates the dealing with hotlines for reports in police investigations, and would be amended by the changes proposed in the Anticrime Package.

LAW 13.756, 2018

This Law, regarding the National public Security Fund – although not strictly related to the issue at hand, determines that resources from the Fund will be used for (i) the hotline for reports' service and (ii) the rewarding, in cash, for those who provide the public authorities with information concerning crimes – being that this rewarding shall be further regulated by the Executive Power.

In its current provisions, it already sets forth that a whistleblower is able to anonymously report wrongdoings to public authorities. Furthermore, it determines the authorities should make available to the public a direct hotline, being that reports should be encouraged.

One of the encouragements would be that this law already sets forth the possibility of rewards (such as pecuniary payments).

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WHISTLEBLOWERS

BRAZIL: ANTICRIME PACKAGE



ANTICRIME PACKAGE



On January 4, 2019, the new justice minister – Sérgio Moro – presented to the public a bill to amend 14 laws, known as the "Anticrime Package", with the main goal of strengthening the fight against organized crime and corruption, among other crimes.

One of the 10 changes originally proposed and already submitted for intense public debate was the amendment of Brazilian Law n. 13,608/18, in order to include a legal provision for whistleblowers to receive a cash reward for their reports.

WELL
INTENTIONED
COMPLAINANTS

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WHISTLEBLOWERS

BRAZIL: ANTICRIME PACKAGE



REPORTING

The Anticrime Package proposed by the Justice Minister, Sérgio Moro, provides that the **Federal Government, states and municipalities install an ombudsman** to receive reports from informants*.

*This obligation was already recommended for Brazilian private entities and was already mandatory for public companies and for government-controlled companies, since the State Companies Law provided for the adoption of risk management and internal control structures, with a mandatory inclusion of whistleblowing channels with non-retaliation policies.



PROTECTION

The proposal indicates the **right to maintain the whistleblowers' identity anonymous**, being that it will only be revealed with their consent and in the case of relevant public interest or concrete interest for an investigation of the facts.



BENEFIT

For the encouragement of reports, the proposal provides that, when the information available results in recovery of profits from a crime against the Public Administration, **a reward of up to 5% of the amount recovered may be granted to the informant.**

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WHISTLEBLOWERS

BRAZIL: ANTICRIME PACKAGE

INFORMATION



BENEFIT

! The Brazilian proposal lacks necessary regulations on how the system would work, which creates **uncertainty** in an area that already suffers from lack of clear legal guidance.

! There is a lot of **discussion and better development of the proposal** that still needs to be done, since the current scenario is **not very well detailed** in comparison with the paradigm.

! Naturally, the paradigm is almost ten years ahead of the Brazilian proposal, and, therefore, expectations should be in regards to the **discussion of further measures** before their factual application, and not to the immediate resolution of the issues at hand.



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WHISTLEBLOWERS

PERU



LAW 27.378,
2000

This law protects those who report acts related to organized crimes – such as witnesses, collaborators, investigators, experts and victims, for example.

INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC)

The first international convention to address the question of corruption was adopted by Peru in 1997.

LAW 29.542,
2010

This law specifically regulates the protection of whistleblowers within the public sector, mainly those whistleblowers who report corruption acts. It would have been elaborated to fulfill the international conventions.

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

The UNCAC, the only legally binding international anticorruption multilateral treaty, was adopted by Peru in 2004.



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WHISTLEBLOWERS

MEXICO



AGREEMENT ON THE CODE OF CONDUCT AND INTEGRITY RULES TO FEDERAL PUBLIC AGENTS, 2015

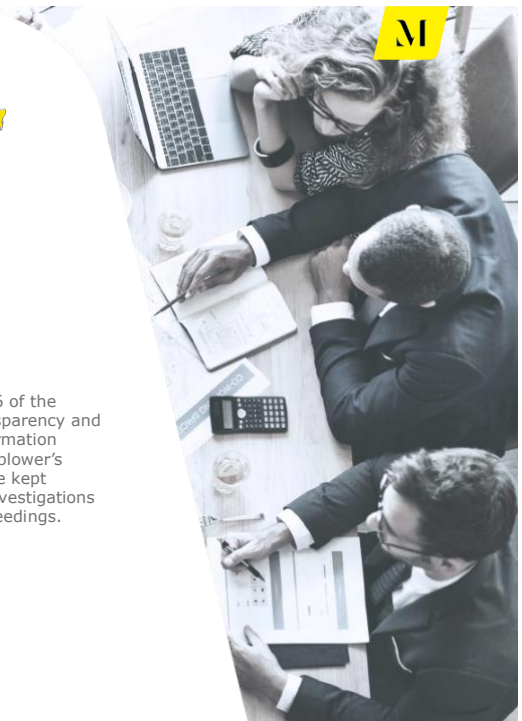
The federal agreement establishes rules for reporting breaches of the Code of Conduct or other institutional integrity rules by public agents of the federal government, being that it protects public officials and citizens who disclose misconduct in the public sector.

GENERAL LAW ON TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION 2015

Sections 113 and 116 of the General Law on Transparency and Access to Public Information provides that whistleblower's personal data shall be kept confidential during investigations and disciplinary proceedings.

GENERAL LAW OF THE NATIONAL ANTICORRUPTION SYSTEM, 2016

The General Law of the National Anticorruption System provides for the establishment of a centralized electronic platform, through which individuals can disclose, anonymously, wrongdoings they've become aware of. The Law is regarding a Governmental system.



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WHISTLEBLOWERS

MEXICO

GENERAL LAW ON ADMINISTRATIVE RESPONSABILITIES, 2016

This law requires that investigative authorities of public organizations subjected to the law adopt anonymous and confidential reporting channels to disclose misconduct and increase the accountability of recipients of disclosures of misconduct.

INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC)

The first international convention to address the question of corruption was adopted by Mexico in 1997.

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

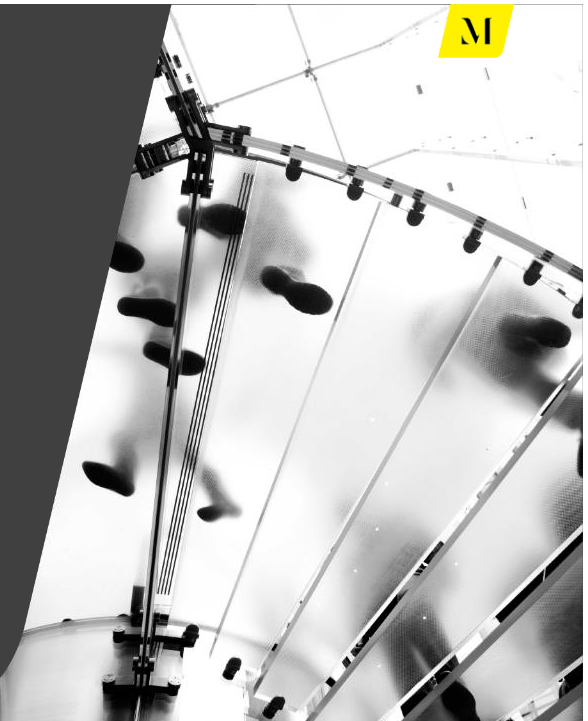
The UNCAC, the only legally binding international anticorruption multilateral treaty, was adopted by Mexico in 2004.



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WHISTLEBLOWERS

PERSPECTIVE AND CONCLUSIONS



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WHISTLEBLOWERS

FUTURE PERSPECTIVES



The new legislation, could discourage employees from using their companies' internal whistleblowing channels, since a **report to the public administration could be more advantageous.**



The proposed system of whistleblowing could cause whistleblowers to not report wrongdoings of their knowledge until the fact happened, since the **materialization of potentially harmful acts** could generate rewards to the whistleblower.



Consequently, there could be a **possible loss of reports within private entities' ethics channel** due to benefits provided by the public administration in exchange for information – causing, therefore, the idleness of a very important tool for the effectiveness of a private entities' compliance program.



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WHISTLEBLOWERS

BRAINSTORMING



How can private entities encourage whistleblowers to, first, report the matter internally?



What kind of benefits can a private entity offer to whistleblowers that report wrongdoings internally?



What improvements can be made on whistleblower protection?



Private entities must promulgate and **stimulate the adoption of its Corporate Culture** (e.g. through tone at the top or endomarketing).



Employees, when motivated (through tone at the top, for example), will be inclined to adopt their roles as **team players**.



Individuals who are **integrated** to a group will more likely try to protect it – hence, they will more likely try to solve issues internally first.



Guarantee of actual **protection** to whistleblowers is also another important measure that should be evidently adopted.

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THANK YOU



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