

Dispute Resolution

ALERT | 11 June 2025



In this issue

SOUTH AFRICA

Safeguarding truth: A new look at the proposed whistleblower-protections in South Africa



For more insight into our expertise and services

Safeguarding truth: A new look at the proposed whistleblower-protections in South Africa

In June 2023, South Africa took a significant step towards enhancing the legal framework for whistle-blower protections with the release of the Discussion Document on Proposed Reforms for the Whistle-blower Protection Regime (Discussion Document), which proposes a new Whistle-blower Protection Amendment Bill (Bill). The proposed Bill has been prompted by the shortcomings in the existing whistle-blower protection regime and the findings from tribunals such as the Zondo Commission. More narrowly, the Bill's aims are to address the shortcomings of the existing Protected Disclosures Act 26 of 2000 (Act).

The Act in its current form offers limited protection to whistle-blowers as it leaves them vulnerable to intimidation, job insecurity and threats to their physical well-being and lives. The current framework, being the Act, is insufficient and is confined to protecting employees without providing the necessary support. Further, the Act requires disclosures to be made through specific channels, which discourages many potential whistle-blowers from coming forward. South Africa's existing framework falls short of international standards in terms of coverage and whistle-blower incentives.

In addition, the Act lacks provisions for anonymous disclosures and does not mandate confidentiality of a whistle-blower's identity. This absence of protection mechanisms can lead to whistle-blowers facing harm and safety risks if their identities are exposed. Further, the Act in its current form has no protection for volunteers and independent contractors. This has been found to be restrictive and a potential deterrent to potential whistle-blowers coming forward with information that can assist in the combating of crime.

In light of this, the proposed Bill represents a significant advancement, aligning South Africa with global best practices and international treaties, including the Organization for Economic Cooperation and Development (OECD) Anti Bribery – Convention (2011 as updated) and the United Nations Convention against Corruption, 2003.

The global consensus is that protecting whistle-blowers is vital for safeguarding the public and private sectors. In both sectors, stronger and more effective measures must foster a culture of accountability and integrity. This is an important element in crime prevention and investigations.

Key proposed reforms

The Discussion Document outlines several key reforms designed to rectify the existing legislative gaps. Firstly, it expands the definition of a whistle-blower to include volunteers and contractors. Secondly, it criminalises threats against whistle-blowers, introducing state-supported protections to enhance their safety.

**DISPUTE RESOLUTION
ALERT**

Safeguarding truth: A new look at the proposed whistleblower-protections in South Africa

CONTINUED

Another important measure is that the Discussion Document also calls for the establishment of a fund to assist whistle-blowers with legal costs and living expenses, thereby alleviating some of the financial burdens they may face. There is a proposal to extend the financial incentive to encourage whistle-blowers to come forward, but this has also been noted to have the undesired outcome of encouraging false reporting, which calls for better controls to be developed.

There is also a understanding that its not just the whistle-blower who may need protection, but sometimes their family as well. This is being considered, taking lessons from other jurisdictions and based on the understanding that emotional support is also essential.

One of the key reforms that is paramount to protecting whistle-blowers, is protecting whistle-blower confidentiality. The Discussion Document proposes a new section to the Act that emphasises the importance of maintaining whistle-blower confidentiality. It requires receivers of protected disclosures to keep the discloser's identity confidential, with exceptions if the discloser consents or if revealing their identity is necessary for effective investigation, public safety, natural justice or law enforcement. Additionally, receivers must inform the discloser if their identity is disclosed.

Enhanced reporting mechanisms

Another crucial aspect of the proposed framework is the emphasis on external reporting mechanisms.

The proposal to allow individuals to report corruption through independent bodies, rather than relying solely on internal structures, has been found to significantly mitigate the risk of retaliation. An important ingredient to an effective crime fighting system is the anonymity/confidentiality of the whistle-blower being protected.

Key regulatory bodies such as the Public Protector, South African Human Rights Commission, Financial Intelligence Centre, and South African Police Service and its Directorate for Priority Crime Investigation, known as the HAWKS, are expected to play vital roles in the proposed system. These bodies will not only receive, process and investigate disclosures but also ensure compliance with whistle-blower laws, maintaining essential reporting channels.

While not explicitly mentioned in the Discussion Document, the role of the media as a powerful ally in exposing misconduct and corruption, cannot be overlooked. Investigative journalism continues to provide a vital platform for whistle-blowers, fostering public awareness and accountability. This is especially important given that transparency and accountability are key features of the proposed reforms.



**DISPUTE RESOLUTION
ALERT**

Safeguarding truth: A new look at the proposed whistleblower-protections in South Africa

CONTINUED



Conclusion

The comprehensive reforms proposed in the whistle-blower protection framework mark a critical turning point in South Africa's fight against corruption and its commitment to transparency. Once the Bill is officially released, businesses will be required to reassess their internal compliance frameworks and adapt to new, broader protections for whistle-blowers. Government institutions will also need to bolster enforcement mechanisms to support whistle-blowers effectively.

The enhanced whistle-blower protections under the Bill are indeed a game changer for tackling corruption in South Africa. Stronger safeguards will encourage more people to report wrongdoing without fear of retaliation, leading to greater transparency and accountability. In the corporate sector, this means fewer financial scandals, improved investor confidence, and better governance. In the public sector, it helps protect state funds, reducing fraud and mismanagement.

As the landscape for whistle-blower protections evolves, it is crucial for stakeholders across both the public and private sectors to remain vigilant, closely monitoring developments and preparing for the regulatory changes that lie ahead. This proactive approach will help ensure a safer environment for those who dare to expose wrongdoing and foster a culture of integrity and accountability in South Africa.

Sentebale Makara and David de Goede



OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



Rishaban Moodley

Practice Head & Director:
Dispute Resolution
Sector Head:
Gambling & Regulatory Compliance
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com



Tim Fletcher

Chairperson
Director: Dispute Resolution
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Imraan Abdullah

Director:
Dispute Resolution
T +27 (0)11 562 1177
E imraan.abdullah@cdhlegal.com

Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester

Director:
Dispute Resolution
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Neha Dhana

Director:
Dispute Resolution
T +27 (0)11 562 1267
E neha.dhana@cdhlegal.com

Denise Durand

Director:
Dispute Resolution
T +27 (0)11 562 1835
E denise.durand@cdhlegal.com

Claudette Dutilleux

Director:
Dispute Resolution
T +27 (0)11 562 1073
E claudette.dutilleux@cdhlegal.com

Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Nastascha Harduth

Sector Head: Corporate Debt,
Turnaround & Restructuring
Director: Dispute Resolution
T +27 (0)11 562 1453
E n.harduth@cdhlegal.com

Anja Hofmeyr

Director:
Dispute Resolution
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Corné Lewis

Director:
Dispute Resolution
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Nomlayo Mabhena-Mlilo

Director:
Dispute Resolution
T +27 (0)11 562 1743
E nomlayo.mabhena@cdhlegal.com

Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com

Vincent Manko

Director:
Dispute Resolution
T +27 (0)11 562 1660
E vincent.manko@cdhlegal.com

Khaya Mantengu

Director:
Dispute Resolution
T +27 (0)11 562 1312
E khaya.mantengu@cdhlegal.com

Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit

Sector Head:
Consumer Goods, Services & Retail
Director: Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Marelise van der Westhuizen

Director:
Dispute Resolution
T +27 (0)11 562 1208
E marelise.vanderwesthuizen@cdhlegal.com

Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2025 14765/JUNE

