

WHISTLEBLOWING AS AN EMERGING NORM FOR OPTIMISING CORPORATE GOVERNANCE: PROSPECTS AND CHALLENGES FOR IMPLEMENTATION

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Abstract

How to cite this paper: Al Dossari, A. F. (2025). Whistleblowing as an emerging norm for optimising corporate governance: Prospects and challenges for implementation [Special issue]. *Corporate Law & Governance Review*, 7(3), 190–201.
<https://doi.org/10.22495/clgrv7i3sip4>

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ISSN Online: 2664-1542

ISSN Print: 2707-1111

Received: 19.05.2025

Revised: 24.07.2025; 08.08.2025;
22.09.2025

Accepted: 17.10.2025

JEL Classification: M10, L00, L67

DOI: 10.22495/clgrv7i3sip4

Whistleblowing has become a global trend in corporate internal monitoring aimed at effectively increasing transparency and encouraging disclosures to enhance the corporate governance of public companies. This treatise presents a critical analysis of how contemporary whistleblowing frameworks apply to the Saudi capital market and highlights the current stance on whistleblowing encapsulated in the prevailing Saudi legal framework, along with suggestions for improvements that would facilitate the creation of a conducive environment for whistleblowing. A multi-method approach comprising comparative legal analysis and an extensive review of the literature on the underlying legal rationale is employed to examine how different legal frameworks affect the willingness of corporate insiders to report violations internally and externally, thereby enhancing governance practices. The research findings show that for business insiders to be motivated to step forward and make disclosures about corporate misbehaviour, there must be an established, comprehensive legal framework that ensures robust individual rights and protections against potential retaliation.

Keywords: Whistleblowing, Whistle-Blower Protection, Corporate Governance, Corporate Fraud, Market Manipulation, Saudi Capital Market

Authors' individual contribution: The Author is responsible for all the contributions to the paper according to CRediT (Contributor Roles Taxonomy) standards.

Declaration of conflicting interests: The Author declares that there is no conflict of interest.

Acknowledgements: This work was supported by the Deanship of Scientific Research, Vice Presidency for Graduate Studies and Scientific Research, King Faisal University, Saudi Arabia [Project Grant No. KFU252877].

1. INTRODUCTION

Emerging markets have historically been associated with corporate governance issues due to several factors, including a high percentage of enterprises with a concentrated ownership structure, minimal institutional ownership percentages, and deficiencies in the oversight and operation of market regulatory and supervisory authorities (Claessens & Yurtoglu, 2013). These issues have been the major factors in numerous cases of financial scandal,

management misconduct, and other forms of intentional market abuse and securities violations worldwide (Soltani, 2014). The stability of financial markets is negatively impacted by market manipulation, especially because the techniques used to manipulate these markets are constantly evolving, and those who engage in such activity are consistently obtaining new tools, thereby exacerbating market distortions (Fletcher, 2020). Such deceptive practices significantly impact market confidence and severely undermine investor

interests (Velikonja, 2013). Combating fraudulent actions in the early stages — before they lead to financial disasters — is optimal for policies intended as an effective means of preventing fraud and other forms of corporate malfeasance (Baer, 2014). Corporate whistleblowing is an example of a type of internal monitoring that has contributed immensely to the fight against fraud and corporate malfeasance (Rapp, 2007). It has also gained international recognition as a key component of corporate governance (Buccirossi et al., 2021). Employing data from at least 1,921 occupational fraud cases spanning more than 138 countries, the Association of Certified Fraud Examiners (ACFE) (2024) posits in its 2024 report that 43% of occupational fraud cases came to light by virtue of the efforts of whistleblowers. Therefore, increasing the involvement of corporate insiders, such as employees, in corporate governance may effectively minimise agency costs and ultimately strengthen a firm's capacity for long-term success as corporate insiders are able to diligently scrutinise the management of the business (Moberly, 2006).

Exploring the new Saudi whistleblowing laws in light of the corporate governance practices of publicly listed Saudi companies is imperative for a proper appraisal of Saudi regulatory standards against global best practices. The stock market in Saudi Arabia is regarded as the largest among the Gulf Cooperation Council (GCC) countries and in the Middle East (Charfeddine & Khediri, 2016). Over the last two decades, the stock market in Saudi Arabia has faced numerous challenges that have impacted its efficiency (Al-Faryan & Dockery, 2021). In its effort to make the market more appealing to both domestic and foreign investors, the Saudi Capital Market Authority (CMA) has been working to harmonise its regulatory standards with global best practices (Alfordy & Othman, 2022).

This treatise also presents a comparative analysis of the development and implementation of corporate whistleblowing laws and regulations in the United States (U.S.), the pursuit of improved corporate governance standards in the U.S. stock market, and the effective prevention of securities fraud and corporate violations within U.S. jurisdiction. The language used in Saudi capital market legislation is heavily influenced by U.S. securities law, as the majority of the articles in the Saudi Capital Market Law are essentially drawn from U.S. securities statutes currently in effect (Beach, 2005). Therefore, Saudi Arabia might be more inclined to modify its corporate governance practices and whistleblowing laws and regulations in light of the U.S. experience as part of its ongoing efforts to improve the business climate in Saudi Arabia.

This study highlights the recently implemented whistleblower laws in Saudi Arabia and the enactment of regulations governing public companies in the country. In particular, it compares and analyses the extent to which the existing whistleblowing system encourages corporate insiders to report potential corporate violations internally or externally by providing explicit and adequate protection for whistleblowers who may face retaliation. This research aims to answer the following questions:

RQ1: Are the recently implemented whistleblowing laws and regulations in Saudi Arabia effective in encouraging individuals with sensitive information about corporate fraud and securities violations to come forward and file internal or external reports?

RQ2: Is the current, emerging whistleblowing framework in Saudi Arabia an effective means of improving the governance practices of publicly traded companies?

Although the governance practices of companies listed on the Saudi Stock Exchange (Tadawul) have been discussed by researchers studying the Saudi stock market and governance practices from various perspectives, no studies to date have addressed the topic from the perspective of whistleblowing practices as an emerging component of corporate governance in Saudi Arabia. This is because the adoption of whistleblowing in the Saudi regulatory framework is relatively new. Exploring this topic contributes to the growing body of knowledge on how whistleblowing can be made more effective and efficient, thereby improving the governance practices of publicly listed companies in Saudi Arabia. This study employs a comprehensive approach, combining comparative legal analyses and systematic literature reviews, to evaluate the current corporate whistleblowing legal framework in Saudi Arabia in the context of global best practices.

The rest of the paper is structured as follows. Section 2 reviews the literature. Section 3 details the research methodology. Section 4 presents the research results. Section 5 discusses them in the context of the existing literature. Section 6 concludes the paper by summarising the key findings and offering practical recommendations to increase the effectiveness of whistleblowing practices in improving corporate governance in companies listed on the Tadawul.

2. LITERATURE REVIEW

Whistleblowing refers to the act of revealing information in the public interest to an outside party with the power to rectify the wrongdoing by voluntarily exposing actual or suspected illegal activities (or other incriminating wrongdoings) under the oversight of an organisation (Yeoh, 2014). Although whistleblowing is not considered a new phenomenon, its employment in attempts to improve corporate governance is still regarded as a relatively recent development (Brand, 2020). Corporate governance scholars have recently proposed a new corporate governance construct — that is, internal corporate fraud whistleblowers — as an effective component of corporate governance (Pittroff, 2016). The argument for internal corporate fraud whistleblowers has been raised with growing frequency regarding publicly traded companies — especially in the U.S. — since the early 2000s, when large-scale corporate fraud was revealed among previously acclaimed first-class companies such as Enron, WorldCom, Tyco International, and Adelphia Communications (Dworkin, 2007). In response, the U.S. Congress passed the Public Company Accounting Reform and Investor Protection Act of 2002, which is more commonly known as the Sarbanes-Oxley (SOX) Act. This act established extensive federal protection for anyone blowing the whistle on corporate fraud, illegal corporate practices, and securities violations (Gonzalez, 2006). When an employee faces retaliatory action, such as job termination, as a consequence of reporting illegal or fraudulent practices, the employee is protected under the SOX Act and has the right to file a SOX retaliation claim (Gilligan, 2023).

The number of studies examining the function of whistleblowing in preventing corporate fraud and wrongdoing, as well as its contribution to improving corporate governance in general, has grown significantly over the past two decades. The research findings indicate that including whistleblowers in formal governance frameworks motivates directors to be more proactive in ensuring that the rules and laws are obeyed (DeMott, 2021). Based on the findings of some studies, whistleblowing laws that permit reporting to public authorities provide a powerful incentive for businesses to implement internal reporting practices — this is because companies that do not promote internal communication are more likely to be confronted with external disclosures and their repercussions than companies that foster internal communication (Callahan et al, 2002). As reported in a study investigating the effects of whistleblowing on corporate governance across several firms, those firms that adopted whistleblowing improved their internal corporate governance in the three years following the implementation of whistleblowing procedures (Smaili & Arroyo, 2022). Other researchers contend that a mechanism that allows crucial information to flow upward to the appropriate decision maker and the guarantees inherent in the existence of an independent corporate body handling whistleblowing that is governed by independent directors are both necessary for ensuring successful whistleblowing practices (Vera-Muñoz, 2005). Whistleblowing, therefore, is believed to be an effective means of preventing and detecting fraud in a timely manner, allowing a company to address wrongdoing while simultaneously reducing losses to fraud. Early detection of fraud is critical to minimising its negative repercussions (Lee & Fargher, 2013). Recent studies also elucidate how stock markets that have implemented internal monitoring measures — in the form of whistleblowing combined with anti-retaliation provisions — have seen a reduction in class action lawsuits (Prentice, 2007). An effective and well-designed whistleblowing framework can play a vital role in corporate governance by exposing corporate fraud and intentional financial manipulation to both internal and external parties (Hanifah & Clyde, 2025). Such a framework should adopt a complementary approach that not only protects whistleblowers but also offers substantial rewards as incentives for reporting wrongdoings (Nyreröd & Spagnolo, 2021). A clear protection mechanism for whistleblowing is essential to encourage insiders to disclose information about wrongdoing and potential corporate malpractice and to report it internally or externally (Scherbarth & Behringer, 2021).

3. RESEARCH METHODOLOGY

This study adopts a multi-method approach to assess and investigate how whistleblowing enhances corporate governance in companies listed on the Tadawul. This comprehensive approach combines comparative legal analyses and systematic literature reviews to evaluate the current corporate whistleblowing legal framework in Saudi Arabia, compare the Saudi framework to practices in the U.S., and assess how the two whistleblowing legal frameworks impact the efficiency of corporate governance. Comparative legal analysis and systematic literature reviews are the two main pillars of this study, a dual approach that provides

valuable, comprehensive insights into how whistleblowing functions as an effective tool for promoting and improving corporate governance practices. Because the SOX Act and the Dodd-Frank Act are considered the cornerstone of the corporate whistleblowing regime in the U.S., and because of their potential beneficial impact on the Saudi legal environment, these two key pieces of U.S. legislation were selected for analysis. Legal documents on the SOX Act and the Dodd-Frank Act are examined extensively, as well as relevant Saudi legislation — such as the Capital Markets Law and the Law on the Protection of Whistleblowers, Witnesses, Experts, and Victims. The comparison of these different pieces of legislation elucidates the definitions of whistleblowing, the extent of disclosures covered, anti-retaliation protections, mechanisms of enforcement, and judicial recourse for whistleblowers in the event of retaliation.

Qualitative research, with a focus on in-depth understanding of perspectives and experiences of the corporate whistleblowing practice and its contribution to enhancing corporate governance over a defined period, can be employed as an alternative research approach to complement the current quantitative study, which only encompasses analysis of the legal text and review of the relevant literature. Longitudinal qualitative studies can provide insight into how changes in the whistleblowing legal framework impact whistleblowing behaviours and governance practices in the context of emerging markets, such as the Saudi stock market. A longitudinal qualitative study can also enable us to understand the intentions of individuals and corporate insiders and their willingness to blow the whistle on corporate violations and wrongdoing. In addition, it would facilitate assessing and tracking changes over the selected time frame, which could be valuable for driving further improvements in the corporate whistleblowing legal framework in Saudi Arabia.

4. RESULTS

4.1. Stance of Saudi Arabia's legal framework on whistleblowing

The efficacy of the corporate whistleblowing framework in Saudi Arabia has been assessed from different aspects, ranging from the availability of efficient and the extent of legal protection for whistleblowers, a specific definition of what constitutes an act of whistleblowing, and the availability of enforcement mechanisms accessible to whistleblowers in the event of retaliation. An examination of the corporate whistleblower protection law of Saudi Arabia reveals that although it is a good starting point for introducing a new concept of reporting corporate and securities violations, there are some areas in which the concept can be further enhanced to become more efficient — especially with respect to protecting whistleblowers against potential retaliatory acts when they disclose criminal corporate misconduct — thereby incentivising insiders to play an active role in enhancing corporate governance. First, the legal framework in Saudi Arabia does not clearly define who qualifies as a whistleblower, nor is there a definition of the act of whistleblowing, which may discourage would-be informants from reporting or complaining, whether

internally or externally. Second, there is no explicit right of action for whistleblowers facing retaliation. Due to fear of retaliation, this loophole in whistleblowing legislation may negatively impact the willingness of potential whistleblowers to report violations.

4.2. Comparative perspectives from the United States

The United States experience clearly shows that although illegal corporate practices are difficult to detect, the likelihood of fraudulent and illegal practices being uncovered increases considerably when corporate insiders with sensitive information are willing to report misconduct and disclose supporting evidence (Fitzmaurice, 2012). The SOX Act and the Dodd-Frank Act provide broad protection to whistleblowers, with unequivocal definitions of whistleblowing and well-defined anti-retaliation and reporting procedures. The Dodd-Frank Act provides financial rewards to whistleblowers for providing new information that leads to successful enforcement actions. This policy of financial rewards has been very effective in inducing individuals to come forward with evidence of corporate fraud and ensuring transparency and accountability in the corporate sector. The U.S. Securities and Exchange Commission (SEC) can impose retaliatory measures and sanction companies that violate whistleblower protection regulations. This strong mechanism of sanctions dissuades companies from violating the Whistleblower Protection Act and encourages future whistleblowers to utilise effective methods of reporting violations and seeking redress. This comparison offers a series of valuable lessons for Saudi Arabia with regard to its attempt to improve its whistleblowing framework. For instance, first, having clear definitions and providing full whistleblower protection are critical for establishing a culture of whistleblowing. Second, an adequate enforcement system — for example, a provision empowering whistleblowers to institute private action — will play a crucial role in encouraging corporate insiders to report and disclose wrongdoing, thus facilitating corporate governance mechanisms.

4.3. Implications for corporate governance practices

The findings of this study show how critical having a sound whistleblowing legal framework and reporting procedure is for improved corporate governance of publicly listed companies in Saudi Arabia. Insufficiencies in the prevailing legislative framework, especially the absence of safeguards from retaliation and the nonexistence of enforcement mechanisms, restrict the effectiveness of whistleblowing in bringing about openness and responsibility in the corporate sector. If whistleblowing is to prove to be an effective tool of corporate regulation, it is essential that Saudi Arabia has in place a broader legal framework of protection for whistleblowers that encourages reporting corporate misconduct. This includes the implementation of compulsory internal reporting requirements that make it mandatory for companies to introduce independent internal mechanisms, such as audit committees, to receive whistleblowing complaints. A good legal framework for corporate whistleblowing must include effective protection for potential whistleblowers against retaliation, categorically definitional provisions of

what qualifies as a whistleblowing act, and robust enforcement tools, as a goodwill gesture to whistleblowers. By acting in a timely fashion to close the gaps and by implementing far-reaching changes, Saudi Arabia can improve the quality of corporate governance standards and introduce a culture of responsibility and openness to its publicly listed companies.

5. DISCUSSION

5.1. The evolution of the whistleblowing framework in Saudi Arabia

One of the best-known cases in the history of the Saudi capital markets involved Etihad Etisalat Co. (Mobily), the second-largest telecommunications firm in Saudi Arabia. The case addressed corrupt business practices that caused many investors to suffer losses totalling nearly one billion Saudi riyals (CMA, 2022b). Several defendants in this case, including senior executives at Etihad Etisalat Co., were convicted of engaging in acts that created a false and deceptive impression of the value of the company's securities — specifically, by presenting incorrect and misleading information in the company's financial statements. Investigations then revealed that many of the top brass at the company had been informed of these breaches, and they were later found guilty of trading based on insider information and selling their shares in the company to avoid losses. The Etihad Etisalat Co. case was followed by many other cases in which large companies listed on Tadawul were found to have engaged in fraudulent and intentional manipulation of their financial statements. Therefore, in the case of Saudi Arabia — notwithstanding the existence of other market surveillance tools — it is highly probable that recent cases of market manipulation and accounting fraud were the impulse that prompted Saudi lawmakers to adopt whistleblowing as a new tool for counteracting fraud and combating wrongdoing in the stock market. The following is an assessment of the corporate whistleblowing legal framework in Saudi Arabia.

5.1.1. Channels and policies for internal and external whistleblowing

In 2017, the CMA established new official channels to encourage investors to submit complaints and reports of suspected market violations (CMA, n.d.). This was intended to make it easier for market investors to come forward to report suspected violations. This produced an increase in the number of reports from investors of suspected violations: from 221 in 2017 to 477 in 2018, which is an unprecedented approximately 115% increase in reporting in the Saudi capital market. Furthermore, the rate at which investors in Saudi Arabia report violations has continued to increase annually. For instance, according to the statistics and annual reports of the CMA, the number of suspected violations of the Capital Market Law and its associated regulations reported by market investors to the CMA via its official channels increased to 1,653 in 2022 compared to 1,360 in 2021 — a rise of approximately 21.5% in just one year (CMA, 2022a). The published data also reveal that violations

committed by public companies recorded the greatest increase between 2012 and 2022 compared to violations by all other entities in the Saudi capital market, with an increase of approximately 147% (CMA, 2022a). This increase in the number of violations reported for publicly traded companies was concentrated in an especially high number of reported corporate governance violations, which increased by 139%, together with an increase of approximately 33% in the number of reported violations concerning financial statements between 2021 and 2022 (CMA, 2022a).

The institution of reporting channels by the Saudi CMA was intended to incentivise market investors to sound the alarm when they discover market violations. Nevertheless, the capital market regulator paid scant attention to incentivising corporate employees to efficiently disclose information on potential violations. The whistleblowing channels, developed and monitored by the Investor Protection Unit (IPU) of the CMA, are primarily designed to encourage investors to report market violations of all types via methods defined by the IPU. The institution of reporting channels years before the promulgation of the legislation regulating capital market whistleblowing has created a gap. This fissure explains the lack of understanding of the importance of expanding the role of corporate insiders as an effective instrument in combating corporate fraud. The primary focus is currently on market investors reporting market violations without considering the importance of other subsets of the population concerned, such as company employees, whose involvement in uncovering violations is an essential component of corporate accountability through which the escalation of misconduct may potentially be prevented or addressed in the early stages before the fallout harms the company and its reputation. The absence of such a provision is considered a flaw in the framework of corporate whistleblowing in the Saudi stock market.

In reality, fraudulent and deceptive corporate practices can go undiscovered for a long time — or even indefinitely — making meaningful accountability highly improbable (Admati, 2017). According to a study by the ACFE (2002), it typically takes an average of 18 months for any corporate manipulation to be detected. The increase in the number of investors' reports of illegal activities in the Saudi stock market in recent years is merely a warning sign highlighting the urgent need to advocate for corporate insider whistleblowing, specifically by corporate employees who can report sensitive information in the interest of the public. This is because outsiders, including government enforcement agencies, will always be external to businesses where fraud and other corporate malpractices are taking place and, consequently, will not learn of such wrongdoing until it is too late — if ever (Berger & Lee, 2022).

In 2019, the Saudi Central Bank (SAMA) took a major, definitive step to encourage internal whistleblowing in financial companies in Saudi Arabia by announcing the promulgation of the first whistleblowing policy in the Saudi financial sector (SAMA, 2019). The pronounced goal of this policy is to encourage financial institutions operating in Saudi Arabia to report irregularities and violations that occur within their organisations. This policy is also intended to regulate whistleblowing and outline the minimal procedures required for accepting and

handling reports of potential violations (SAMA, 2019). Therefore, the objective is to help combat fraud and corruption in financial institutions by facilitating the reporting of such wrongdoings to top management when detected. Nonetheless, although the policy establishes minimum guidelines to be followed by companies to maintain reporting channels in financial institutions, it does not delineate anything further than simply the internal reporting of wrongdoings. Furthermore, the scope of its application is further narrowed by the fact that it only applies to firms engaging in financial activities, such as banks and insurance, and financing companies, whether publicly traded on the Tadawul or privately held (SAMA, 2019). Although this policy specifies the minimum guidelines that financial institutions must follow to ensure that reporting can be made through specific determined channels, the policy does not outline minimum guidelines or detailed procedures stipulating how corporate management should deal with such internal whistleblowing with regard to the subsequent action, nor does the policy specify whether internal reports of potential wrongdoing should be directed to a specific or independent corporate body within the company, leaving many questions unanswered and potentially impeding its effectiveness. However, agency theory appears to be useful for explaining many concerns regarding whistleblowing and organisational responses to internal whistleblowing (Smaili et al., 2023). Therefore, two factors jointly play a significant role in enhancing a whistleblower's trust in internal reporting: the whistleblower's certainty that the recipient of their report will perform their duties in the best interest of the company and its investors, and the reliable measures available to the whistleblower to ensure that the recipient of their report acts in the whistleblower's best interests (Smaili et al., 2023). More importantly than simply adopting an internal whistleblowing system, a company should be clear about how it handles internal reports and how it addresses detected wrongdoings, including the subsequent actions taken by the recipients of those internal reports (Krügel & Uhl, 2023). Otherwise, an inefficient whistleblowing system could exacerbate the situation and increase the likelihood of wrongdoing within the company (Krügel & Uhl, 2023).

In 2021, however, the CMA announced the promulgation of the Regulation on the Reporting of Violations of the Capital Market Law, which is applicable to all public companies listed on the Saudi stock market. As specified in this regulation, listed firms are obliged to draft an internal policy that protects employees who report suspected violations or wrongdoing, thereby forbidding a firm from disciplining an employee on these grounds, infringing their rights, or withholding benefits in retaliation (CMA, 2021). In contrast to the measures imposed by SAMA on financial institutions, the CMA does not require any minimum procedures for internal reporting in public companies. Internal reporting procedures and other measures for dealing with internal whistleblowing are viewed as essential in business organisations, given that they incentivise workers to report misconduct by fellow workers. The business reputation of a company can be protected if the leadership can mitigate misconduct while also minimising the negative consequences of violations (Rachagan & Kuppasamy, 2013). Hence, according to

the whistleblowing literature, except whistleblowing is required to be made to an internal independent corporate body and specific procedures are required to be taken after the internal reporting is received, external whistleblowing tends to be more successful than internal whistleblowing because it attracts the attention of external parties — including government bodies — while firms are frequently under intense pressure to reject such claims as unfounded. Therefore, if an individual uses internal channels to report misconduct, the risk is that the firm will find it easier to dismiss any concerns or accusations than to act properly on the revelation (Dworkin & Baucus, 1998). Although the Saudi Corporate Governance Regulation, which was promulgated by the CMA in 2017, requires publicly traded companies to establish an internal audit committee, there is no law mandating the internal reporting of corporate violations to be made to an independent corporate body, such as the internal audit committee of the company. Consequently, some argue that the optimal whistleblowing model should allow corporate insiders, including employees, to seek external reporting channels as a last resort (Barnett et al., 1993).

5.1.2. Incentives and protections for whistleblowers

As previously mentioned, in 2021, the CMA issued the Regulation on the Reporting of Violations of the Capital Market Law, which applies to all publicly traded companies listed on the Tadawul. The scope of application of this regulation is not limited to the employees of these companies but extends to anyone reporting violations of stock market regulations or the Capital Market Law and any of its implementing regulations to the relevant authorities (CMA, 2021). This regulation stipulates both the incentives and the scope of protection that the CMA can provide to individuals who report violations. Under this regulation, the authorities can also award a maximum of 20% of the fines and monetary penalties collected from the violators to the reporting individual (CMA, 2021, Art. 7). However, for the whistle-blower to be guaranteed a reward, the disclosure made by the individual must result in a final decision by the authority or relevant committees to impose a fine or other financial penalty, and the total amount of these fines and financial penalties must exceed 1,000,000 Saudi riyals. Furthermore, under Article 9 of the Regulation on the Reporting of Violations of the Capital Market Law, the CMA may offer legal aid and support to anyone whom it deems to have been harmed as a consequence of filing a report (CMA, 2021, Art. 9). Although this regulation states that the CMA is committed to providing legal support to whistleblowers, it contains no provisions criminalising retaliatory acts against whistleblowers who report violations that fall within the relevant scope of companies in the event that they report them internally or externally. This regulation also does not establish a private right of action for whistleblowers to pursue action against the reported firm if they face discrimination or retaliation as a consequence of disclosing the reported infractions.

On 18 February 2024, the Saudi Arabian Council of Ministers passed the New Law for the Protection of Whistleblowers, Witnesses, Experts, and Victims. The purpose of this law is to provide protection to individuals who reveal information regarding potential violations to the relevant public

authorities and may, as a result, be in jeopardy. This includes protection against any intimidation, retaliation, or assault on these individuals or members of their families. This law states that, in accordance with the provisions of the law, a special programme shall be established by the public prosecution (Law for the Protection of Whistleblowers, Witnesses, Experts and Victims, 2024, Art. 4). The administrators of the programme shall have full discretion and authority — in accordance with the provisions of the law — to accept whistleblowers, witnesses and experts into the programme to enjoy the protection granted under the law and to determine the type of protection to be provided to these individuals and the extent of its duration (Law for the Protection of Whistleblowers, Witnesses, Experts and Victims, 2024, Art. 5). Thus, the protections provided under this law are not dispensed by default to any individual who comes forward with information to a public authority, except he or she is accepted into the protection programme created by the public prosecution. The law also specifies that for a witness, expert, or whistleblower to be approved for admittance into the programme, they must meet certain requirements. The first criterion is a reasoned request for protection made by a witness, expert, or whistleblower. The second is a recommendation from the supervisory authority, the control authority, the evidentiary authority, the investigative authority, or the court based on the facts available regarding the justifications for offering protection. The question this raises is whether the new law applies to whistleblowers of potential violations occurring in publicly traded companies in Saudi Arabia. In fact, regarding the definition of the crimes that the Act covers, the law stipulates that it applies to whistleblowing on major crimes requiring arrest under the laws and regulations of Saudi Arabia — this includes any crime that is punishable under the laws of Saudi Arabia with imprisonment of more than three years (Law of Criminal Procedure, 2001). Therefore, in the context of the Capital Market Law, the definition of a major crime may include any act, or engagement in any action, that creates a false or misleading impression of the market or the price or value of any security for the purpose of creating that impression and thereby inducing third parties to buy, sell or subscribe to such security or refrain from doing so (CMA, 2003). This also applies to the act of trading a security, directly or indirectly, based on inside information a person may have obtained through their family, business, or contractual relationship. The Capital Market Law explicitly states that such acts are punishable by imprisonment for up to five years and are, therefore, defined as major crimes in Saudi Arabia. Under the Law for the Protection of Whistleblowers, Witnesses, Experts, and Victims, any manager of a private entity operating in the Saudi Arabia who is proven to have used force or violence against a protected person — enrolled in the protection programme after disclosing information to the public — or to have engaged in any act of retaliation, including termination of employment, shall be punished with a fine of up to three hundred thousand Saudi riyals and imprisonment for up to two years (Law for the Protection of Whistleblowers, Witnesses, Experts and Victims, 2024, Art. 26). Therefore, although the new law constitutes an enormous transformation and a significant move

towards protecting whistleblowers in the Saudi Arabia in terms of public enforcement, there will be certain restrictions on how broadly it may be applied to violations of securities and capital market laws and regulations. There are two shortcomings to this new whistleblowing law. First, the law provides protection for only external whistleblowing — that is, reports to a public authority, such as the CMA in the context of the capital market — and leaves those who choose to report violations internally to face potential retaliation without protection. Second, from the standpoint of an insider, it is difficult to establish whether a violation or wrongdoing perpetrated within a company qualifies the insider for protection from the state when reported, as the violations may or may not be classified as major crimes. Whistleblowing laws should encourage individuals to report even acts that may be considered potential violations of capital market laws and regulations, regardless of how these violations are classified. Otherwise, the enacted whistleblowing laws may fundamentally fail or not work as intended. Certain practices may be considered harmful to the market and the stakeholders in the affected entity, but may not be classified as major crimes in Saudi Arabia. Thus, these practices do not meet the criterion for the provision of protection to whistleblowers under the new law. Furthermore, even when such a reported potential violation is considered a major crime, as defined in the Act, the acceptance of the whistleblower into the protection programme is dependent on meeting certain requirements and is still under the discretion of the programme's management, which is domiciled in the public prosecution. Specifying the types of violations that are considered a major crime and, therefore, make a whistleblower eligible for admittance into the protection programme discourages corporate insiders from taking steps to report violations — internally or externally — that they might be aware of because they are uncertain of whether such a violation would qualify them to seek legal protection while they blow the whistle. Therefore, malfeasance may be perpetuated continuously over time. Several practices, especially in their early stages, that are considered violations of capital market laws and implementing regulations are not considered major crimes, as defined by the law. However, laws should encourage whistleblowers to report potential violations as early as possible to avoid undesirable consequences. The provisions of the new law are focused primarily on public enforcement, which includes penalising and imprisoning violators and protecting validated whistleblowers — once accepted into the programme — from any potential physical harm they might sustain as a consequence of reporting a violation. Although private rights of action are not addressed in the new law, the programme's management is empowered to take appropriate action to protect whistleblowers from harm if they are the target of retaliatory actions such as employment termination or reduction of job benefits (Law for the Protection of Whistleblowers, Witnesses, Experts and Victims, 2024, Art. 17). However, the law does not mention any explicit private right of action that a whistleblower can pursue when facing retaliation. For example, job reinstatement in cases where a whistleblower's employment is wrongfully terminated, or any other remedy that a whistleblower can seek in such cases of retaliation acts.

5.1.3. Summary

The new Law on the Protection of Whistleblowers, Witnesses, Experts, and Victims is a step in the right direction to create a conducive environment for reporting corporate misconduct. Nonetheless, this research reveals a series of significant loopholes that impede the realisation of that objective. Potential whistleblowers are up against a brick wall, as it is impossible to precisely define who qualifies as a whistleblower and what would qualify as an act of whistleblowing. In addition to discouraging people from blowing the whistle, this ambiguity reinforces a culture of ambiguity regarding the protection available to whistleblowers. Although the Law on the Protection of Whistleblowers, Witnesses, Experts, and Victims does offer some protection, it is ambiguous in application because there are no clear mechanisms by which redress can be sought if whistleblowers are retaliated against. For example, the law does not activate effective enforcement and anti-retaliation mechanisms, which are crucial because fear of retaliation has been found to act as a deterrent to whistleblowers in the majority of jurisdictions worldwide.

5.2. Comparative Insights from the United States

The United States legal regime of whistleblowing, as it is institutionalized in the general protection of the SOX and Dodd-Frank Acts, has important implications for Saudi Arabia. The U.S. model not only provides a wide definition of whistleblowing but also includes extensive anti-retaliation provisions under which whistleblowers can report wrongdoing without fear of retaliation. The following sheds light on the U.S. corporate whistleblowing framework.

5.2.1. Channels and policies for internal and external whistleblowing

In the literature on corporate governance and whistleblowing, the predominant perspective is that corporate employees play a critical role in uncovering corporate wrongdoing (Mechtenberg et al., 2020). Employed as a method of corporate monitoring in the U.S., corporate insiders — primarily employees — are encouraged to come forward with information concerning suspected violations by offering incentives and protection to insiders who disclose information regarding any corporate and securities violations to the SEC (Yeoh, 2015). The SEC enthusiastically encourages whistleblowers, regardless of whether they are corporate insiders, Main Street investors, or unrepresented claimants, by protecting their identities and rewarding qualified individuals who expose stock market violations (SEC, 2022). This makes the U.S. whistleblowing programme particularly extensive and efficient with respect to eliciting reports of corporate violations that only insiders could possibly detect in the early stages. Employee participation in reporting violations — as an essential component of corporate accountability — has been enhanced by U.S. legislation that provides legal protection for insiders who reveal information pertaining to corporate fraud and other corporate wrongdoings (Evans et al., 2021).

In the U.S., the SOX Act has completely transformed the way in which the disclosure

mechanism is enforced under U.S. federal securities laws. Following the enactment of the SOX Act, the American public was brought under the watchful gaze of gatekeepers, including independent directors, attorneys, and auditors, in addition to monitoring themselves based on a commitment to exposing wrongdoing through whistleblowing (Backer, 2004). Public companies are mandated under the SOX Act to set up an internal whistleblower reporting mechanism that allows employees to privately disclose any suspected wrongdoing to the company's audit committee (Lee, 2016). Furthermore, the SOX Act mandates that the internal audit committee be composed solely of independent non-executive directors and grants them the power to retain and manage reports and engage external legal counsel (Cox, 2006). Therefore, public companies in the U.S. are mandated under the SOX Act to set up an internal whistle-blower reporting mechanism that allows employees to privately disclose any suspected wrongdoing to the company's audit committee, which is composed solely of independent, nonexecutive directors with the power to retain and manage reports and engage external legal counsel. This makes internal reporting policies more feasible and decreases the risk that reports will be disregarded or that opportunistic managers will retain such reports within the firm without addressing the reported malfeasance or taking further action.

The U.S. has implemented several channels to facilitate corporate whistleblowing, particularly reporting corporate wrongdoing to the SEC. The SEC whistleblowing program, which was established pursuant to the Dodd-Frank Act, offers financial incentives as well as protection for potential retaliatory acts against individuals as a result of their steps towards blowing the whistle on suspected corporate misconduct and securities fraud to the SEC (Taylor et al., 2011). The SEC whistleblowing program has contributed to a significant deterrent effect on financial reporting violations (Wiedman & Zhu, 2023). This strategy, which is also referred to as the 'structural model', attempts to improve corporate monitoring and lower reporting barriers between insiders and external government agencies (Moberly, 2006). The SEC program has been shown to be effective in enforcing securities law, while the possible challenges remain in balancing between internal and external reporting (Mckessy, 2020). Overall, despite the U.S. regulatory environment actively encouraging internal reporting of corporate wrongdoing, external whistleblowing to the SEC remains a strong option for insiders to report when it becomes a necessary step to be taken by those informants (Lombard, 2020).

5.2.2. Incentives and protections for whistleblowers

Regardless of whether corporate wrongdoing is reported internally or externally, an anti-retaliation policy is the cornerstone of corporate whistleblowing because insiders often face some sort of retaliation, whether they choose to come forward internally or report infractions externally. Nevertheless, studies have shown that those who intend to disclose corporate wrongdoing externally typically need significant protection, as corporate leaders often consider them disloyal (Hoffman & Schwartz, 2015). In this regard, it is widely

acknowledged that the U.S. is at the forefront of providing corporate whistleblowers with a safe haven and a unique legal framework (Kampourakis, 2021). Historically, the U.S. False Claims Act (FCA) was the first federal act to provide incentives and legal protection for government employees who blow the whistle in the interest of the public (Lockman, 2015). In addition, later amendments to the Act are viewed as enhancing whistle-blower protection against retaliation in the public sector — going further to address retaliatory scenarios, with claimants now able to bring lawsuits against their employers (Farber, 2014). Under the Act, U.S. government employees who blow the whistle may pursue qui tam financial incentives, which also include treble damages and fines recovered by the government, as well as the reasonable costs, expenses, and legal fees incurred during the reporting of the misconduct in relation to the government's financial interests (Tschepik, 2020).

Nevertheless, because financial and accounting fraud was not regarded as a public concern at the time, it was not protected under the FCA. However, government action later became necessary to restore public confidence in financial information (Leech & Leech, 2011). Therefore, the U.S. Congress passed the SOX Act in 2002 in response to several accounting-related scandals that transpired between 2000 and 2002, including accounting fraud at large companies such as Enron and WorldCom (Rockness & Rockness, 2005). After its enactment, the SOX Act was widely regarded as one of the most effective and outstanding sets of anti-retaliation legislation in the world, granting regulatory bodies and U.S. courts the authority to provide corporate whistleblowers with both monetary and non-monetary compensation for any harm that might come to them as a consequence of making a disclosure as a whistleblower (Lee et al., 2020).

Notably, the SOX Act has improved protection for corporate insiders who disclose potential wrongdoing to the public or their employers in an effort to prevent top executives from abusing their power and thereby causing scandals reminiscent of the Enron and WorldCom scandals (Riotto, 2008). Furthermore, the anti-retaliation clause of the SOX Act has been seen as crucial for preventing various kinds of discriminatory actions, including threats and job termination, that might be perpetrated against an employee who reports suspected corporate fraud, whether internally or externally. In addition, it provides employees with a private right of action to defend themselves in the event of retaliation (Cherry, 2004). The Act specifies the remedies that whistleblowers may seek, including job reinstatement, in cases where a whistleblower's employment is wrongfully terminated (Cherry, 2004). This anti-retaliation clause provides protection for corporate employees regardless of whether they reported malfeasance externally or internally (Labriola, 2017).

The significance of the anti-retaliation provisions of the SOX Act is viewed similarly in public enforcement actions because the Act stipulates that retaliation against whistleblowers can attract a custodial sentence of up to 10 years (SOX Act¹). Meanwhile, the Dodd-Frank Act, passed by the U.S. Congress in 2010 in response to the global economic recession, is also regarded as reinforcing

¹ https://pcaobus.org/About/History/Documents/PDFs/Sarbanes_Oxley_Act_of_2002.pdf

the role of the corporate whistle-blower because it provides whistleblowers with the right to pursue monetary rewards from the SEC. Certain measures included in the Dodd-Frank Act demonstrate the conviction on the part of Congress that further and more thorough protection of the corporate whistleblower framework was essential to halt much of the kind of misconduct considered the cause and driver of the 2008 economic meltdown (Leifer, 2014). In addition, under the Dodd-Frank Act, when a disclosure made by a whistleblower results in an actual enforcement proceeding, the whistleblower may be entitled to a reward ranging from 10% to 30% of the fine imposed by the authorities (Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010).

These two laws — the most recent of such laws passed by the U.S. Congress — are designed specifically to benefit the private sector. They function as the cornerstone for protecting and rewarding corporate insiders who come forward with information that serves the interests of the public (Givati, 2018). There is evidence that retaliation claims increased significantly after the SOX Act came into force in the U.S. in 2002 (U.S. Department of Labor, Occupational Safety and Health Administration, 2015). The SOX Act and its development — evolving with the lawsuits brought under its anti-retaliation provisions — are considered a sweeping regulatory reform that has changed the laws and standards regulating publicly traded firms in the U.S. (Fitzmaurice, 2012). The Dodd-Frank Act introduced a significant alteration to the anti-retaliation provisions of the SOX Act by creating a new legal avenue for employees claiming to be the object of retaliation. This meant that employees were now able to bring their cases before U.S. Federal Courts (McCormac, 2017). In addition, the SEC was granted the right to exercise its power of enforcement in holding retaliatory employers legally accountable (Kennedy, 2013). In 2016, the SEC declared the settlement of enforcement proceedings brought against International Game Technology (IGT), a gambling company, in an exercise of the authority vested in the SEC under the Dodd-Frank Act (SEC, 2016b). This enforcement lawsuit is considered the first ever independent action brought by the SEC in response to retaliation against a corporate whistle-blower for raising issues concerning IGT's accounting (SEC, 2016a). Thus, in addition to giving whistleblowers a private right of action to file a claim of retaliation, the Dodd-Frank Act expands the protection offered to those who might suffer retaliation for disclosing information to the SEC by giving the market regulator additional authority to initiate a lawsuit (Pope & Lee, 2013).

5.2.3. Summary

In addition to the broad definition of whistleblowing, the U.S. model also features unique anti-retaliation measures that provide whistleblowers with a feeling of security and the notion that they can disclose corruption without prosecution. Individuals are encouraged by the reward offered by the Dodd-Frank Act to provide information that brings about substantial corporate accountability. The comparison further highlights the requirements for an effective legal corporate whistleblowing structure that unveils offences and irregularities, such as definitions of whistleblowing

actions, open enforcement mechanisms, and laws that safeguard whistleblowers against any potential retaliatory actions. Drawing from the U.S. experience, a Saudi Arabia whistleblower policy with such protection for corporate whistleblowers would place such individuals in a strengthened position to come forward to report potential corporate wrongdoings.

6. CONCLUSION

Broad protection of corporate whistleblowers against the risk of retaliation is critical to encouraging potential whistleblowers to come forward, notwithstanding the possible repercussions of their decision to report wrongdoing (Near & Miceli, 2016). Although recent legal developments in Saudi Arabia are an essential initial step towards enhancing corporate governance through whistleblowing, further reforms are needed to create a more conducive environment for whistleblowing.

Internal reporting of company violations as a sole measure — when there are no external avenues for issuing an ultimatum — is a suboptimal course of action for corporate insiders (e.g., employees). This is especially true when there is no law mandating an internal company policy on the internal reporting of violations by corporate insiders to an independent corporate body, such as the company's internal audit committee. An internal report may be filed to prevent fraud, notwithstanding the possibility of it being somewhat ineffective without the institution of a mandatory rule for such reports to be made to an independent internal corporate body. This is because, in some cases, management may misuse its position of authority to conceal such matters, thereby leaving corporate fraud and other misconduct undisclosed and without consequence.

Explicit anti-retaliation public enforcement protection for corporate whistleblowers that covers a wide range of corporate wrongdoings and enshrines the right of a whistle-blower to pursue a private right of action in the event of retaliation is, therefore, critical to providing whistleblowers with adequate protection and motivating them to expose malpractice as soon as it occurs. Such provisions will enable corporate insiders acting as whistleblowers to take legal action if they suffer retaliation.

When the legal framework for reporting corporate violations is well established with regard to the provision of protection for corporate insiders serving as whistleblowers against possible repercussions, corporate insiders would be more willing to come forward to report suspected corporate fraud and other market violations, regardless of whether they choose to report these issues internally or externally. Only in this case can the whistleblowing system be employed as an effective component of a framework designed to facilitate monitoring and enhancing corporate governance.

Although this study contributes to the existing knowledge of the structure and function of Saudi Arabia's evolving whistleblowing legal framework, it has several limitations. It relies heavily on the analysis of legal texts regulating corporate whistleblowing and the reporting of capital market violations. However, this legislative framework is relatively new in Saudi Arabia and is still in its early stages of development. As whistleblowers are vulnerable to retaliation, and their motives for

reporting potential corporate violations are qualitative, subsequent studies could employ qualitative research methods to better understand real-world practices. Longitudinal studies could be conducted to determine the long-term effects of changes in the legal framework on corporate

governance and whistleblowing practices in Saudi Arabia. These would provide a more nuanced understanding of how legal reforms influence insiders to report misconduct and how such whistleblowing improves governance practices.

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