

## **BEST PRACTICES FOR TRINIDAD AND TOBAGO**

1. **Institution:** The names of the institutions that are implementing the best practice:

Designated Authorities within Trinidad and Tobago such as; The Auditor General's Department, Board of Inland Revenue, Bureau of Standards of Trinidad and Tobago, Central Bank of Trinidad and Tobago, Children's Authority of Trinidad and Tobago, Customs and Excise Division, Elections and Boundaries Commission, Environmental Management Authority, Equal Opportunity Commission, Fair Trading Commission, Financial Intelligence Unit of Trinidad and Tobago, Integrity Commission of Trinidad and Tobago, National Physical Planning Authority of Trinidad and Tobago, Occupational Safety and Health Agency, Occupational Safety and Health Authority, Office of Procurement Regulation, Office of the Director of Public Prosecutions, Office of the Ombudsman of Trinidad and Tobago, Regulated Industries Commission, Trinidad and Tobago Police Service, Trinidad and Tobago Securities and Exchange Commission.

2. **Title:** The name of the best practice, the topic it covers, and the subject of the Convention to which it is related:

Whistleblower Protection in accordance with **Article III (8) of the Convention-** Preventative Measures (Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems).

3. **Description of the best practice:** Include a brief description and summary of the best practice, as well as the reason why it should be considered a best practice, expressly referring to its sustainability:

**The Whistleblower Protection Act, 2024** is **Act No. 9 of 2024** (herein after referred to as **Act No.9**) was introduced in the House of Representatives as a Bill on the 14<sup>th</sup> of January, 2022. The bill was passed both in the House of Representatives and the Senate and received assent on the 19<sup>th</sup> of July, 2024. **Act No.9** will come into force on a date as fixed by the President by proclamation.

**The Whistleblower Protection Act, 2024** aims to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector. The provisions of this Act are considered a best practice as it seeks to protect persons who are making those disclosures from detrimental action and regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct.

- **Section 3 (S.3)** of the Act defines a whistleblower to mean any person who makes a disclosure to a whistleblowing reporting officer or a whistleblowing reports unit whether the disclosure qualifies as a protected disclosure or not.
- **S.6** of the Act makes provisions for an employee of an organization to make a disclosure of improper conduct where he has reasonable grounds to believe that improper conduct has occurred, is occurring or is likely to occur within the organization. **S.6** also provides for the instances of when these disclosures can be made as well as sets out the procedure for all oral disclosures to be reduced into writing.
- **S.7** stipulates the instances in which a disclosure will be a protected disclosure while **S.9** provides for the instances in which an anonymously made disclosure will be a protected disclosure.
- **S.10** of the Act requires that an employer shall appoint and keep in employ, whistleblowing reporting officers for receiving and processing internal disclosures of information about improper conduct committed. These officers are also responsible for determining whether an internal disclosure should be referred for further investigation to a designated authority. **S.11** mandates an employer to have in operation, internal procedures for receiving and dealing with a disclosure. Further, **S.13** requires a designated authority to establish a whistleblowing reports unit for receiving and processing external disclosures pertaining to the matters which fall within the areas of responsibility of its designated authority. There are 21 bodies that are listed under the **Schedule** of the Act which are considered a designated authority.
- **S.14** allows for an employee of an organization may make an external disclosure to the whistleblowing reports unit of a designated authority and stipulates the instances in which the external disclosures can be made.
- **S.15** provides that a whistleblowing reports unit can refer a disclosure to another whistleblowing reports unit where that disclosure can be better processed.

The provisions of the act mentioned above are considered best practices as it promotes accountability and transparency within the public and private sector. Also, the provisions create a framework to address disclosures of improper conduct by mandating that whistleblowing units be created and that there are designated whistle blowing officers to process disclosures made by whistleblowers.

4. Reasons/Importance: Reasons for pursuing best practice should be given. A description should be made of the situation in place before the adoption of the best practice and identification of the problem or problems it is to address:

Whistleblowing legislation is an effective tool in the fight against corruption. Whistleblowers play a key role in detecting and preventing corruption when they report wrongdoing in their environment.

As mentioned before, **S.6** of the Act makes provisions for an employee of an organization to make a disclosure of improper conduct where he has reasonable grounds to believe that improper conduct has occurred, is occurring or is likely to occur within the organization. This is important as a provision is now created whereby an employee can report improper conduct.

Under **S.17**, a whistleblower is protected from detrimental action being taken against them on account of having made a protected disclosure whilst **S.18** safeguards a whistleblower from any criminal, civil or disciplinary proceedings for having made a protected disclosure. Further protections are afforded to whistleblowers as the identity of a whistleblower is preserved under the Act. **S.20** prohibits the disclosure of information that identifies the whistle-blower in addition to **S.23** which makes it an offence to do same. These sections of the Act are essential as it allows an employee to report acts of corruption that they may be privy to without impunity as well as protect the identity of the employee who reports the wrongdoing.

In addition, **Section 17, 18, 20 and 23** will also empower whistleblowers to make disclosures as their identities will remain anonymous as well as they will be reassured that they are protected from detrimental actions such as civil actions being taken against them. Further, under **S.21**, A whistleblower who believes that detrimental action has been, or is likely to be taken against him may apply to the High Court for Civil remedies.

**S.22** of the Act creates offences for preventing and intimidating a whistle blower from making disclosures, inducing the whistle blower by threats, subjecting any person to detrimental action as a consequence for making disclosures as well as making a false or misleading disclosure. **S.22** is crucial as it protects a whistleblower from harm by penalizing a person who takes any detrimental action against the whistleblower. **S.24** also creates penalties for obstructing whistle-blowing reporting personnel from performing their duties.

**S.25** imposes penalties for destroying or concealing a document or thing that is relevant to a disclosure. This section is key as it will deter persons who seek to alter anything that is associated with a disclosure as penalties can be enforced against them. Further, **S.25** imposes penalties against someone who falsifies a document while under **S.19** no immunity is afforded to a whistleblower if he was the perpetrator or an accomplice in the improper conduct. These two sections are critical as it seeks to discourage wrongdoing, even in the reporting of a wrongdoing.

Therefore, Whistleblowing legislation plays a significant role in safe guarding the public good and as such **The Whistleblower Protection Act, 2024** is important as it creates a system for protecting public servants and private citizens who, in good faith, report acts of corruption in Trinidad and Tobago.

5. Approach: What was the proposed design and methodology for applying the best practice? What was considered in its design and methodology? Were other countries' experience taken into account? Was a model law taken into account?

Consideration was given to existing legislation in other jurisdictions such as: **The Protected Disclosures Act, 2011** in Jamaica, **The Protected Disclosures Act, 2000** in New Zealand, **The Public Interest Disclosure (Whistleblower Protection) Act (Alberta), 2012** in Canada, **The Public Interest Disclosure Act, 1998** in the United Kingdom and **The Whistleblower Protection Act 711, 2010** in Malaysia.

6. Implementation: How is the best practice being implemented? What were the human and financial resources needed for its implementation?

As mentioned before, **The Whistleblower Protection Act, 2024** was introduced in the House of Representatives as a Bill on the 14<sup>th</sup> of January, 2022. The bill was passed both in the House of Representatives and the Senate and received assent on the 19<sup>th</sup> of July, 2024. However, the Act will come into force on a date as fixed by the President by proclamation.

It should also be mentioned that in order to effectively implement the best practices in the Act, there are administrative actions that are required to be taken by the 21 Designated Authorities within Trinidad and Tobago. Therefore, when these administrative functions are carried out, the Act may be proclaimed and the provisions of the Act will take effect and be implemented within Trinidad and Tobago.

7. Outcome: What is the end result or expected end result of implementing the best practice? What are the benefits and/or success stories? Have they addressed the problems originally identified as necessitating a best practice to be implemented? What has been its impact?

Trinidad and Tobago has identified that whistleblower legislation is necessary for protecting whistleblowers and that it is also fundamental in order to combat corruption. Therefore, the expected outcome of **The Whistleblower Protection Act, 2024** is to:

1. Combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector.
2. Protect persons making those disclosures from detrimental action and
3. Create a system that regulates the receiving, investigating or otherwise dealing with disclosures of improper conduct.

8. Potential for technical cooperation: Can the best practice be adapted and used by other countries? Is it possible to provide technical assistance to other countries in implementing the best practice? Provide the point of contact for the entity that can facilitate the technical assistance.

This practice can be adapted and used by other countries. Provision of technical assistance may be possible based upon specific requests.

9. Follow-up: Who or what groups will monitor the practice's implementation? How will its implementation be monitored? Will there be a Follow-up Report?

There is an obligation under **S.16** which require the director of a whistleblowing reports unit to submit a report annually to the Minister of National Security on the activities of the whistleblowing reports unit during the preceding year. **S.16** also requires the Minister to lay a report in relation to the activities of the whistleblowing reports unit in the Parliament of Trinidad and Tobago annually. **S.28** also allows the Minister to make regulations regarding:

1. The retention of disclosures and other information collected.
2. Prescribing the length of time during which disclosures and other information collected under this Act may be retained by whistleblowing reporting officers and whistleblowing reports units.
3. Conducting independent reviews of information retained by whistleblowing reporting officers and whistleblowing reports units to ensure compliance with the Act.

10. Lessons: What are some of the lessons learned in implementing the Best Practice? What are the challenges in implementing the best practice?

The Best Practice has not been fully implemented and only upon full implementation then the lessons learnt can be evaluated.

11. Documentation: Where can further information be found regarding the best practice (e.g., Internet links)?

### **The Whistleblower Protection Act, 2024**

<https://www.ttparliament.org/wp-content/uploads/2022/06/a2024-09g.pdf>

12. Contact: Who can be contacted for further information?

The Ministry of National Security

Telephone: 627-1032 / 625-2864 / 625-7554

Email: [corpcomm@mns.gov.tt](mailto:corpcomm@mns.gov.tt)