About the Speaker:

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Andy facilitates, speaks and presents at conferences, workshops and training, locally and internationally, on the subjects of Internal Auditing, Governance, Risk Management, Controls, Fraud Investigations, Strategic Business Management, Accounting and Taxation.

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Agenda

- Introduction
- Definitions of Whistleblowing and Whistleblower
- Importance of Whistleblowing
- World Corruption Perception Index
- World Report on Occupational Fraud and Abuse
- Internal and External Whistleblowing
- Channels of whistleblowing
- Rights to Information
- Confidentiality of Information
- Freedom of Speech
- Whistleblowing and Leaking of Information

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Agenda Cont’d

- Internal Auditors Responsibilities in Communicating Sensitive Information
- Whistleblowers Bills of Rights
- Impediments
- Whistleblowers’ unwillingness to blow the whistle
- Lack of seriousness by organizations in fraud and corruption detection
- Opportunities
- Increased Recognition of Importance of Whistleblowing
- International bodies’ conventions to fight fraud and corruption
- Legislation to protect whistleblowers
- Examples of whistleblowing legislation and guidelines
- Access to information legislation

Introduction

Definitions of Whistleblowing and Whistleblower
- There is generally no agreed definitions.
- Some are as follows:
  - The UK’s Committee on Standards in Public Life defines whistleblowing as “raising a concern about malpractice within an organisation”.
  - The International Labour Organisation refers to whistleblowing as “the reporting by employees of illegal, irregular, dangerous or unethical practices by employers”.
  - A whistleblower is one who reveals wrongdoing within an organization to the public or to those in positions of authority. (The American Heritage® Dictionary)

Importance of Whistleblowing
- An important tool in the fight against fraud and corruption (Art. 33 of UN Convention on Corruption 2003 “shall consider”... “appropriate measures to provide protection”).
- Promotes the right to life –avoidance of physical disasters.
- Corporate Governance /Risk Management – Early alerts
- Management neglects problems
- Provides employees means for disclosing unethical or illegal conduct
- Provides employees with knowledge about who to disclose to
- Complement audit work
- Detect more fraud and corruption
WORLD CORRUPTION PERCEPTION INDEX 2016

- Corruption hurts all countries, in every region of the world
- No Country gets closer to a perfect Score
- Over 3/4 of the 176 countries fall below the midpoint of 0 (highly corrupt) and 100 (very clean)
- Global average score is 43 indicating endemic corruption
- Top scoring countries (yellow) were far outnumbered by the low scoring (orange and red) countries where citizens face the tangible impact of corruption on a daily basis

Impact of Fraud and Corruption
- Deters foreign investment
- Increases the cost of public service delivery
- Increases the cost of doing business,
- Promotes poverty and underdevelopment
- Undermines the rule of law and
- Donor aid is stopped

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2016 World Report to the nations on Occupational Fraud and Abuse

The most common detection method was tips (39.1% of cases)
Organisations that had reporting hotlines more likely detected fraud than those without (47.3% Vs 28.2%)

OCCUPATIONAL FRAUDS DETECTION METHODS

- Notified by Law Enforcement
- External Audit
- Document Examination
- Account Reconciliation
- By Accident
- Management Review
- Internal Audit
- Tips

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**Introduction Cont’d**

Internal and External Whistleblowing
- Internal whistleblowing is contained within the organisation
- External Whistleblowing involves reporting to an outside agency
- However, Internal hotlines are often open to external whistleblowers
- A hotline may be outsourced to a thirdparty who operates it for the organisation

Channels of Whistleblowing:
- A special telephone hotline
- Email based service
- Web form
- Regular mail
- Fax
- Simply speaking to trusted right persons

**Rights to Information**

Confidentiality of Information
- Confidential workplace information can be in three classes i.e.:
  - Employee,
  - Management and
  - Business information

Failure to secure confidentiality of information can lead to:
- Loss of business
- Misuse of the information to commit illegal activity
- Loss of employee trust, confidence and loyalty

**Rights to Information Cont’d**

Freedom of Speech
- Article 10(1) of the European Convention (ECHR) states that: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers…”
- However, this does not provide blanket support for whistleblowers because Article 10(2) states that: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime…”.
- Abraham Mansbach stated that the act of whistleblowing embodies and represents a practice of ‘fearless speech’ which is a crucial element in democracy. He however expressed concern over the tension that exists between the socio-political facet of whistleblowing and the private sphere.
Whistleblowing and Leaking of Information

- People need to be persuaded to raise their concerns internally rather than externally or internationally.
- Many individuals have come to realise that if whistleblowers are not protected by law it might be wiser to leak information anonymously than to use official channels.
- The problem of being identified is demonstrated by the case of Bradley Manning, who was convicted by court-martial in July 2013 of violations of the Espionage Act and other offenses, after disclosing to WikiLeaks nearly three-quarters of a million classified, or unclassified but sensitive military and diplomatic documents. He was sentenced in August 2013 but President Obama commuted his sentence, hence was scheduled to be released on May 17, 2017.
- One other trend worth highlighting is the more widespread acceptance that whistleblowing is an important tool in the fight against fraud and corruption.

Internal Auditors Responsibilities in Communicating Sensitive Information

- Practice Advisory 2440-2: Communicating Sensitive Information Within and Outside the Chain of Command, provides guidance:
  - The auditor normally communicates credible substantial information in a timely manner to senior management and the board in accordance with Standard 2060 and PA 2060-1 following the normal chain of command.
  - In accordance with Standard 2600 the auditor should present the information and difference of opinion to the board if senior management is exposing the organisation to unacceptable risk and is not taking appropriate action.
  - For certain types of sensitive occurrences e.g. fraudulent financial reporting by publicly traded securities organisations, the typical chain of command communication may need to be accelerated to the board even when the auditor and management have agreed on which action to take.

Whistleblowers Bills of Rights

- Many countries in the world have passed whistle blower rights’ laws that give whistle blowers the right to:
  - Communication: Freedom to disclosures provided they respect the confidentiality of sensitive information.
  - Protection from Retaliation: Institutions have a duty not to tolerate or engage in retaliation against good-faith whistle blowers.
  - Fair Procedures: Institutions have a duty to provide fair and objective procedures for examining and resolving complaints, disputes, and allegations of misconduct.
  - Procedures free from Partiality: Institutions have a duty to follow procedures that are not tainted by partially arising from personal or institutional conflict of interest or other sources of bias.
Rights to Information Cont’d

Information: Institutions have a duty to elicit and evaluate fully and objectively information about concerns raised by whistleblowers.

Timely Processes: Institutions have a duty to handle cases involving alleged misconduct as expeditiously as is possible without compromising responsible resolutions.

Vindication: At the conclusion of proceedings, institutions have a responsibility to credit promptly—in public and/or in private as appropriate—those whose allegations are substantiated and concluded.

Impediments

Unwillingness of whistleblowers to blow the whistle

- The 2011 National Business Ethics Supplemental (NBES) Research Report established what goes through the mind of the whistleblower before he decides to blow the whistle.
- The research suggested many possible determinants of an individual’s willingness to whistle blow, including:
  - Awareness: The importance or seriousness of the act impacts on his willingness to use a hotline
  - Agency: His perceptions of responsibility for reporting the act may impact his willingness to report the event
  - Security and Investment: The organization’s reputation for retaliation will also influence his perception to making a report.
  - Support and Connectedness: The whistle blower’s trust on some authorities will influence his perception to making a report

Unwillingness of whistleblowers to blow the whistle Cont’d

- The 2014 Deloitte Forensic India Survey Report on making whistleblowing programs successful in corporate India established that employees don’t whistle blow because of:
  - Fear of retaliation or harassment
  - Fear of termination or suspension
  - Inadequate channels to voice concern
  - No precedent of action taken by the management
  - Other — e.g. (i) Time – workload, (ii) Not mandatory, (iii) Small concerns might be dismissed, (iv) No knowledge of overall picture, (v) Lack of knowledge about whistle blowing, (vi) Not promoted by organisation’s culture, and (vii) Lack of support, advice and information.

(See results of the survey in the graph below)
Unwillingness of whistleblowers to blow the whistle Cont’d

- 57%:
  - All of the above
- 25%:
  - Fear of retaliation or harassment
- 6%:
  - Fear of termination/suspension
- 5%:
  - Inadequate channels to voice concern
- 5%:
  - No precedent of action taken by the management
- 2%:
  - Other

Lack of Seriousness by organisations in corruption and fraud detection

Most organisations perceive whistleblowing as ‘yet another measure to implement’ as part of the larger fraud risk management efforts and, hence, it gets relegated to a tick in the box.

Organisations must understand that whistleblowing is, perhaps, the only tool that comes close to pointing out a fraud in its early stages and must therefore be supported by ensuring that:

- Data from the whistle blower hotline is continuously monitored and integrated into the larger fraud risk management systems so that even small irregularities can be detected early.
- More time and resources on building robust whistleblowing systems is invested.
- Employees are trained on the existence and use of the whistleblowing system.

Opportunities

Increased recognition of Importance of Whistle blowing

- More recently, organisations have realised that whistleblower mechanisms are a possible tool for the detection, and possibly prevention, of corporate wrongdoing.
- For example the Sarbanes-Oxley Act (2002) requires audit committees to establish procedures for:
  - The receipt, retention, and treatment of complaints received by the organisation regarding accounting, internal accounting controls, or auditing matters; and
  - The confidential, anonymous submission by employees of the organisation of concerns regarding questionable accounting or auditing matters.
- Globally, organisations are publishing the number of whistle blower complaints received in a bid to encourage more whistleblowing e.g. the US Department of Justice reported over 3,000 whistle blower tips between 2012 and 2013.
Opportunities

Increased recognition of Importance of Whistle blowing Cont’d

- Organisations are establishing a whistleblowing hotlines for better governance and reduction of fraud
- Organisations understand that employees are their eyes and ears – i.e. they see and hear everything that goes on within, including inappropriate behaviour and who is involved in perpetrating it.
- International bodies such as the United Nations, the European Union and others make some conventions to fight Fraud and Corruption and protect whistle blowers in the world.

Legislation and Guidelines to protect whistle blowers

- Many countries in the world are introducing whistleblowing legislation, regulation or guidance in order to protect whistle blowers from retaliation of wrongdoers and incentivise them with financial rewards.
- Different countries are at different stages of implementing their legislation and guidelines.
- Examples of whistleblowing legislation and guidelines are as follows:
  - United States of America (USA): The Sarbanes Oxley Act (SOX) (2002) is a comprehensive response to corporate scandals and failures which includes extensive provision for whistleblowing and whistle blower protection. The Sarbanes Oxley Act.
  - United Kingdom (UK): The Public Interest Disclosure Act (PIDA) (1998) was borne out of the enquiries into several major disasters (such as the sinking of the Herald of Free Enterprise, the Clapham rail crash and the collapse of BCCI).

Other European Countries – European countries outside the UK and Ireland have resisted implementation of whistleblowing legislation for various reasons. In France their belief is that, organisations have so many controls and management have a responsibility to prevent malpractices hence it is not necessary to place the burden of whistle blowing on staff.

Africa: some few countries such as Uganda (Whistle blowers Protection Act 2010) and Ghana (Whistle blowers Act 2006) legislated whistleblowing while so many others are in the process of coming up with the legislation. Many organisations however have policies that protect whistle blowers.

Malaysia: Securities Industry Act amendments advocate protection against whistleblowers.

Corporate governance codes (e.g., U.K., Australia, Singapore)

Companies’ codes of ethics/conduct encouraging or even imposing a duty on employees to report breaches.
Access to Information (ATI) Legislation

- Access to information is widely recognized as a cornerstone of good governance and an important anti-corruption tool.
- Almost 100 countries, including 10 in Africa, have national laws or decrees that recognize the public’s right to access information or records from government. In Africa, the following are countries in Africa which ATI legislation by 2011:
  - **South Africa:** Promotion of Access to Information Act (2000)
  - **Angola:** Freedom of information Law (2002)
  - **Zimbabwe:** Access to Information and Protection of Privacy Act (2002)
  - **Uganda:** Access to Information Act (2005)
  - **Ethiopia:** Freedom of Information and Mass Media Law (2008)
  - **Liberia:** Freedom of Information Act (2010)
  - **Guinea:** Organic law on the right of access to Public Information (2010)
  - **Nigeria:** Freedom of Information Law (2011)
  - **Tunisia:** Decree on Access to the Administrative Documents of Public Authorities of Tunisia (2011)
  - **Niger:** Charter on Access to Public and Administrative Documents (2011)

**Q & A**

Thank you!