

LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA

Part one – general provisions

Article 1 (Subject)

The Law on protection of whistleblowers in the Institutions of Bosnia and Herzegovina (hereinafter referred to as: the Law) regulates the status of persons reporting acts of corruption in the institutions of Bosnia and Herzegovina and legal persons established by the institutions of Bosnia and Herzegovina, the reporting procedure, the obligations of the institution in regard to reporting acts of corruption, procedure for protection of the whistleblowers, and shall lay down sanctions for violation of provisions of the Law.

Article 2 (Definitions)

Terms used in this Law shall mean the following:

a) Corruption shall mean any abuse of power entrusted to a public servant, employee, and advisor, elected or appointed official, which that may lead to private gain to that person, domestic or foreign legal entity or natural person. Specifically, corruption can include requesting directly or indirectly, offering, giving or accepting the bribe or any other undue advantage or the prospect thereof, which violates appropriate performance of any duty or behavior expected of the recipient of the bribe. Corruption shall mean also violation of the law, other regulations, as well as the irregularity related to work and frauds that indicate existence of corruption.

b) Whistleblower shall mean a person employed in the institutions of Bosnia and Herzegovina and legal entities established by the institutions of Bosnia and Herzegovina, who due to reasonable belief or circumstance indicating to existence of corruption in any of the institutions of Bosnia and Herzegovina in good faith reports to the authorized persons or institutions any suspected acts of corruption in line with this law;

c) Protected disclosure/ reporting is:

- 1) disclosing information to the competent authorities which in the employee's reasonable belief show corruption in the light of paragraph a) of this Article;
- 2) reporting of a criminal offence of corruption against responsible person in the institutions referred to in Article 1 of this Law;
- 3) filing a lawsuit, complaint or appeal in regard to acts corruption against responsible person in the institutions referred to in Article 1 of this Law;
- 4) giving a testimony before a court or an administrative authority in proceedings against responsible person in the institutions referred to in Article 1 of this Law;
- 5) Cooperation in the proceedings conducted by investigative bodies.

d) Special form of protected disclosure/ reporting is disclosing or any other form of making publically available the information indicating to corruption, provided that whistleblowers has a reason to suspect that:

- 1) he/she will be subjected to detrimental action by a certain person, or
- 2) in the event of protected reporting from paragraph c) of this Article, there will be no appropriate action taken, or that the evidence and information will be concealed or destroyed, or
- 3) if the same information has been disclosed to the subject referred to in paragraph c) of this Article and that no appropriate action was undertaken within the legal timeline, provided that prior to making a special form of protected disclosure, the whistleblower is obliged to consider possible damage that may be incurred as a result of his disclosure.

e) Detrimental action shall mean an action whereby the employer causes harm to the employee by issuing a decision to terminate his/her employment, by cancellation of the employment contract, by suspending from work, by degrading to a lower-ranked position, by declaring the employee's post

redundant, by initiating disciplinary action, by blackmailing or giving a negative appraisal, by creating hostile work environment, by not giving him work tasks, in order to deterring the employee from protected disclosure or actions representing a retaliation against the employee who reported suspected acts of corruption.

f) **Corrective measure** shall mean any action that forbids, alleviating or removing the causes or consequences of the detrimental actions against the whistleblower in relation to the reported case of corruption, which particularly covers the security measure and damage compensation.

g) A **competent authority** is a superior or any other person in an institution of Bosnia and Herzegovina and a legal entity that is established by the institution of Bosnia and Herzegovina where the whistleblowers is employed, and which is in charge of monitoring the legality of work in that institution; person or body of management or administration; person or body performing the work of monitoring or audit in the institutions of Bosnia and Herzegovina; body in charge of implementing the criminal investigation and prosecution of the criminal act doers; Institution of Ombudsmen for Human Rights in Bosnia and Herzegovina; the Agency for Prevention of Corruption and Coordination of the fight against corruption;

h) **Good faith** shall mean the stance of the whistleblowers based on facts and circumstances of which the whistleblower has his own knowledge of and which he or she deems to be true.

Part two – Procedure of whistleblower protection

Article 3 (Reporting)

Any person employed in the institutions of BiH referred to in Article 1 of this Law, may report a suspected act of corruption or circumstances of possible corruption to the competent authorities if such a person has information and/or physical evidence showing the existence of corruption. Abuse of right to report, set out in paragraph 1, shall constitute a severe breach of work duties.

Article 4 (Types of protected reporting/disclosure)

The protected reporting (disclosure) may be:

- a) Internal, and
- b) External.

Article 5 (Internal reporting/disclosure)

(1) Any person employed with the institutions of Bosnia and Herzegovina, referred to in Article 1 of this Law, shall be required to submit a report referred to in Article 3 paragraph (1) of this Law to the following:

- a) His/her superior or to any other person, in the institution where he/she is employed who is responsible for the compliance of that institution with the law, or
- b) a person or to the institution's manager who is responsible for compliance of that institution with the law;
- c) a person or a body performing supervision or audit in the institutions of Bosnia and Herzegovina, referred to in Article 1 of this Law.

(2) The internal reporting (disclosure) shall be done in the manner as specified by the institution's internal by-law referred to in Article 3 paragraph (1) of this Law

(3) By way of derogation of paragraphs (1) and (2) of this Article, a report referred to in paragraph (1) of this Article shall be submitted directly to the institution's manager in the event that:

- a) The manager of an institution has not issued the institution's by-law from paragraph (2) of this Article; or

- b) The procedure for internal reporting is not known, namely if the information on the service, body or person responsible for receiving and considering reports referred to in Article 3 paragraph (1) of this Law is not visibly displayed in the institution's premises and on its web site of the institution; or
 - c) The whistleblower has reason to believe that the authorized person, who is designated by the by-laws to receive reports on suspected acts of corruption and whistleblower protection, participates directly or indirectly in the act of corruption
- (4) Persons addressed in paragraph (1) and (3) of this Article may approach the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption with a request to obtain the status of a whistleblower in line with Article 7 of this Law.

Article 6 **(External reporting/disclosure)**

- (1) External reporting/disclosure shall imply reporting to the following:
- a) authorities responsible to conduct a criminal investigation and prosecution of perpetrators of criminal offences; or
 - b) The Agency for Prevention of Corruption and Coordination of Fight Against Corruption, and
 - c) The public, in accordance with article 2, point d) of this Law.
- (2) External reporting/disclosure shall be conducted in case that:
- a) The procedure based on internal reporting/disclosure referred to in Article 5 of this Law takes longer than 15 days; or
 - b) The whistleblower has a reason to believe that the procedure based on internal reporting/disclosure referred to in Article 5 of this Law has been irregular, or
 - c) The whistleblower has every reason to believe that the authorized person who is designated by laws to receive the reports referred to in Article 5 of this Law or the manager of an institution, are directly or indirectly associated with the act of corruption.

Article 7 **(Affording the Whistleblower Status)**

- (1) The Agency for Prevention of Corruption and Coordination of Fight against Corruption shall decide on affording an employee with the whistleblower status within 30 days following his or her request, made in a good faith, to the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption regardless of whether the employee claims that detrimental actions have been taken or only suspects that they could be taken.
- (2) Protected reporting/disclosure shall commence from the day of submitting the report referred to in Article 3 of this Law.
- (3) The whistleblower shall not be subjected to material, criminal or disciplinary liability for disclosing an official secret in case of he or she reports an act of corruption to the competent authority.
- (4) The Agency for Prevention of Corruption and Coordination of Fight Against Corruption shall inform the whistleblower of the decision to afford the whistleblower status.

Article 8 **(Removing detrimental actions)**

- (1) In case that the whistleblower informs the Agency for Prevention of Corruption and Coordination of Fight against Corruption that any detrimental action has been taken against him/her as referred to in Article 2, paragraph 1, point (e) of this Law, the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall be required to request all relevant documentation from the institution and/or to request from the Administrative inspectorate of the Ministry of Justice of Bosnia and Herzegovina to investigate allegations, establish the fact, and to undertake measures set by the law, and to submit its minutes thereof to the Agency for Prevention of Corruption and Coordination of Fight Against Corruption.
- (2) If, based on the documentation received from the institution and/or the minutes specified in paragraph (1) of this Article, the Agency establishes that any detrimental action has been taken against

the whistleblower, in relation to the reported case of corruption, referred to in Article 3 paragraph 1 of this Law, the Agency for Prevention of Corruption and Coordination of Fight Against Corruption shall issue an instruction to the director of the institution as to remove the consequences of detrimental action that the whistleblower suffered.

(3) In case that the director of the institution claims that the same detrimental action would have been taken against the whistleblower even in case that he/she had not reported the suspected act of corruption, the director shall be required to prove it.

(4) The director of the institution shall be required to take corrective action in order to remove the detrimental action within three days following the receipt of the instruction from the Agency for Prevention of Corruption and Coordination of Fight against Corruption.

(5) The corrective action shall constitute the cancellation of detrimental action and restitution, and can be terminated after the completion of the labour dispute proceedings before the competent court by its final and binding court decision.

(6) The Agency for Prevention of Corruption and Coordination of Fight against Corruption shall publish every year a separate annual list with the names of the institutions where corruption was reported, along with specifying the type of detrimental action taken and the information on whether a corrective action order by the instruction referred to in paragraph (2) of this Article has been taken.

Article 9 (Cessation of protection)

(1) In case it is found during the proceeding that the whistleblower has not acted in good faith when filing a report referred to in Article 3 paragraph 1 of this Law, the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall suspend affording the protection to the whistleblower.

(2) The Agency for Prevention of Corruption and Coordination of Fight against Corruption shall submit the decision to suspend affording protection to the whistleblower and to the director of institution where the whistleblower is employed.

(3) If, during the investigation, it is proven that the whistleblower has not acted in good faith, namely that he/she knowingly submitted a false report referred to in Article 3 paragraph 1 of this Law, the Agency for Prevention of Corruption and Coordination of Fight Against Corruption shall file a criminal report against this person, provided that it is established that this act has elements of a criminal offence.

Part three – Law Enforcement Oversight

Article 10 (Law Enforcement Oversight)

The Administrative Inspectorate of the Ministry of Justice of Bosnia and Herzegovina and the Agency for Prevention of Corruption and Coordination of Fight against Corruption shall oversee the enforcement of this law, respectively.

Article 11 (Issuing a misdemeanour warrant)

In case any misdemeanour referred to in Article 12 of this Law is found during the inspection, the administrative inspector shall issue a misdemeanour warrant in accordance with the Law on Misdemeanours of Bosnia-Herzegovina.

Article 12 (Fines for Misdemeanors)

(1) A misdemeanor fine amounting from KM 10,000 to KM20,000 shall be imposed on a director of institution for failing to comply with the instruction by the Agency for Prevention of Corruption and

Coordination of Fight against Corruption and to take corrective measure pursuant to article 8, paragraph 2 of this Law.

(2) A misdemeanor fine amounting from KM10,000 to 20,000 shall be imposed on a director of institution for failing to issue by-laws specified in article 5, paragraph 2 of this law, pursuant to article 13 of this Law.

(3) A misdemeanor fine amounting from KM 1,000 to KM 10,000 shall be imposed to a person referred in article 3 of this Law for knowingly submitting a false report on an act of corruption.

Part four – Final provisions

Article 13. (Issuing implementing regulations)

All institutions to which this Law applies shall issue by-laws specified under art. 5 paragraph 2 of this within 90 days.

Article 14 (Entry into Fore)

This Law shall enter into force on the 8th day following its publishing in the Official Gazette of Bosnia-Herzegovina.