



**small business
development**

Department:
Small Business Development
REPUBLIC OF SOUTH AFRICA

Whistle Blowing Policy

Amended in September 2017

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DEFINITIONS

“ THE ACT”	means the Protected Disclosure Act of 2000
“ THE POLICY”	means the Whistle Blowing Policy
“ DEPARTMENT”	means Department of Small Business Development
“DISCLOSURE “	<p>Means any disclosure of information regarding any conduct of an employer, or employee of that employer, made by an employee or a member of the public who has reason to believe that the information concerned shows or tends to one or more of the following:</p> <ul style="list-style-type: none"> (a) that a criminal offence has been committed, is being committed or is likely to be committed; (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject; (c) that a miscarriage of justice has occurred, is occurring or is likely to occur; (d) that the health and safety of an individual has been, is being or likely to be endangered; (e) that the environment has been, is being or is likely to be damaged; (f) breach of code of conduct; (g) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) or (h) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed
“ EMPLOYEE”	means any person employed by the Department of Small Business Development
“ EMPLOYER”	means any persons who employs or provides works

	for any other person and who remunerate or expressly or tacitly undertakes to remunerates that other person means the Department of Small Business Development
“IMPROPRIETY”	means any conduct which falls within any of the categories referred to definition of “disclosure” , irrespective of whether or not the impropriety occurs or occurred in the Republic of South Africa or elsewhere
“ PROTECTED DISCLOSURE”	for the purpose of this policy it means any disclosure made in compliance with the requirements of this Policy
“ WHISTLE BLOWING”	means reporting of misconduct, fraud, corruption and any other illegal activity and impropriety which has the potential to harm the department and any other individual t
“ WHISTLE BLOWER “	means a person who expose misconduct, fraud, corruption and any other illegal activity and impropriety happening in the department
“ OCCUPATIONAL DETRIMENT”	means being subjected to any disciplinary action or any form of harassment as a result of blowing whistle
“ HOTLINE”	means telephone number administered by the Public Service Commission for reporting fraud and corruption

WHISTLE BLOWING POLICY

1. INTRODUCTION

- 1.1. This Policy is developed to encourage employees and members of the public to make disclosures.
- 1.2. The Department of Small Business Development (DSBD) is committed to working towards a culture of openness and transparency.
- 1.3. DSBD is further committed to the fight against Fraud and Corruption, whether the perpetrators are internal or external, as stipulated in DSBD Fraud Prevention and Anti-Corruption Policy and Strategy.
- 1.4. DSBD fully subscribes to the provisions of the Protected Disclosures Act, 2000 (Act No.26 of 2000), which requires the implementation of a whistle-blowing mechanism and the protection of employees who disclose information regarding unlawful or irregular conduct by the employer or other employees in the employ of the employer.
- 1.5. DSBD employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
- 1.6. DSBD employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure.
- 1.7. This Policy is developed based on principles objects of the Protected Disclosures Act, which encourage employees to disclose employees to disclose any acts of misconduct without fear of any recriminations or reprisals.
- 1.8. Section 2 of the Protected Disclosure Act clearly defines the “objects of the Act” as Follows:
 - 1.8.1. To protect an employee from being subjected to an occupational detriment on account of having made a protected disclosure.
 - 1.8.2. To provide for remedies in connection with any occupational detriment suffer
 - 1.8.3. To provide for procedure in terms of which an employee can, in responsible manner, disclose information regarding improprieties by his or her colleagues,

other stakeholders and employers

1.9. The Department also recognises that it is obliged to systematically manage and regularly review and follow up on all reported allegations for fraud and corruption in terms of the Prevention and Combating of Corruption Activities Act (12 of 2004).

1.10. The Policy identifies the processes and tools for reporting or disclosing any allegations of fraud and corruption without fear of any recriminations, reprisals or victimisation. Not only does it wish to minimise its risks to fraud and corruption but also maximise its opportunities for zero fraud and corruption environment. In doing so, the following are to be considered;

1.10.1. **Harassment/Victimizations** - The Department acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. The Department will not tolerate harassment or victimisation and shall protect whistle blowers.

1.10.2. **Confidentiality** - The Department will take all necessary steps to protect an individual's identity when he/she raises a concern and does not want his/her identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee may be required as part of the evidence.

1.10.3. **Anonymous Allegations** - Department of Small Business Development encourages employees and members of the public to make disclosures through the internal channels or anonymously with the Public Service Commission (PSC). However, concerns expressed anonymously may be difficult to investigate as evidence may not be obtained from anonymous whistle blowing; nevertheless, they will be followed up by the Department in terms of the Fraud Investigation Procedure. The decision to follow up will, however, be applied by taking into account the following:

1.10.3.1. The seriousness of the issue raised;

1.10.3.2. The credibility of the concern; and

1.10.3.3. The likelihood of confirming the allegation.

1.10.4. Untrue Allegations or Malicious Whistle Blowing - All employees and other parties shall be discouraged from making allegations, which are false and made with malicious intentions. Where such malicious or false allegations are discovered, the person who made the allegations will be subjected to disciplinary action or other appropriate action in the case of external parties. This is because officials or other parties that make false allegation must understand the implications in terms of resources and costs of undertaking investigations.

2. PURPOSE OF THE POLICY

- 2.1. To provide a mechanism by which staff members and members of the public are able to make disclosures with the appropriate line management, or specifically appointed persons within DSBD, where they have reasonable grounds to believe that there is any breach of the code of conduct, fraud, corruption, impropriety or any form of illicit activity within DSBD, and not attract reprisal or victimization for such disclosures of information.
- 2.2. In terms of the Protected Disclosure Act, employees can blow the whistle on fraud and corruption within DSBD without the fear of being victimized or suffering any occupational detriment as defined by the Act. Staff members are encouraged to raise concern responsibly through the procedure laid down in this policy document.

3. LEGISLATIVE MANDATE

- 3.1. The Accounting Officer has committed the Department of Small Business Development, to adopt a fraud prevention process of **ZERO TOLERANCE TO FRAUD AND CORRUPTION**. That is aligned to the principles of good corporate governance, as supported by:
- 3.2. **Section 8 of the bill of rights in the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996)** recognize that criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage.

- 3.3. **Public Finance Management Act (PFMA), Act 1 of 1999 as amended by Act 29 of 1999**, section 81 which deals with financial misconduct by officials in the departments and constitutional institutions. Section 85 and 86 deals with regulation on financial misconduct procedures and offences and penalties.
- 3.4. **Prevention of organized Crime Act (Act 121 of 1998) (POCA)** the Act deals with measures to combat organised crime, money laundering and criminal gang activities; it prohibits certain activities relating to racketeering activities; and also provide for the prohibition of money laundering and for an obligation to report certain information; and to criminalise certain activities associated with gangs; and provides for the recovery of the proceeds of unlawful activity; for the civil forfeiture of criminal property that has been used to commit an offence, property that is the proceeds of unlawful activity
- 3.5. **Treasury Regulation chapter 4** which emphasis that there must be investigations of alleged financial misconduct, criminal proceedings and reporting.
- 3.6. **Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)** which provides for the training and designation of presiding officers of equality courts for purposes of the Act; to provide for the designation of magistrates' courts as equality courts; to further regulate the training of the clerks of equality courts; and to provide for matters connected therewith
- 3.7. **Protected Disclosure Act 26 of 2000**, which makes provision for procedures in terms of which employees in both the private and public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employer; also provide for the protection of employees who make a disclosure which is protected in terms of this act and to provide for matters connected therewith.
- 3.8. **Prevention and Combating of Corrupt Activities Act 12 of 2004** which guides the department on how to prevent and combat corrupt activities in the workplace.
- 3.9. **Promotion of Administrative Justice Act No 3 of 2000** which gives effect to a right to an administrative action that is lawful and further makes provision to be given reasons in writing for an administrative action.



- 3.10. **Promotion of Access to Information Act No 2 of 2000** which gives effect to a right of information held by the state or any person for purposes of exercising a constitutional right.
- 3.11. **Batho Pele principles** were developed to serve as acceptable policy and legislative framework regarding service delivery in the public service. These principles are aligned with the Constitutional ideals of promoting and maintaining high standards of professional ethics; providing service impartially, fairly, equitably and without bias; utilizing resources efficiently and effectively; responding to people's needs; the citizens are encouraged to participate in policy-making; rendering an accountable, transparent, and development-oriented public administration.
- 3.12. **Code of conduct** which outlines how should the employees within public service conduct their duties, how they should relate to the public and how to conduct their personal and private interest.

4. SCOPE OF POLICY

- 4.1. The policy is applicable to the conduct of DSBD employees only and deals with concerns raised relating to, amongst others, fraud, corruption, unethical conduct, financial misconduct and malpractice within DSBD.
- 4.2. The Policy does not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct.
- 4.3. If however, during the investigation, any concern raised in relation to fraud and corruption issues appears to the investigator to be relating more to grievance or discipline, then the grievance procedures will be applied.
- 4.4. Examples of issues covered by the policy include the following:
- 4.4.1. Financial misconduct
 - 4.4.2. Health and safety
 - 4.4.3. Environmental damage
 - 4.4.4. Unfair discrimination
 - 4.4.5. Corruption
 - 4.4.6. Fraud
 - 4.4.7. Bribery

- 4.4.8. Occupational detriment
- 4.4.9. Unethical conduct
- 4.4.10. Attempts to conceal or suppress any information relating to any of the above paragraphs (5.4.1) to (5.4.9).

5. WHO IS AFFECTED BY THE POLICY

- 5.1. The policy applies to all DSBD employees.
- 5.2. The policy will not be applicable to Entities reporting to the DSBD (known as sefa and seda) as they are autonomous, and will thus be subject to their own internal governance systems.
- 5.3. However, the Director General of DSBD may request the Chief Audit Executive (CAE) of any entity to provide information regarding any investigation flowing from a whistleblower report.

6. WHO CAN RAISE CONCERNS

- 6.1. For some minor issues (e.g. personal use of the department's equipment, stationery etc.), officials shall raise the concerns with their immediate supervisor/ manager. In general, however, the whistle blowing procedure shall be used for potentially more serious and sensitive issues (e.g. fraud and corruption).
- 6.2. Therefore, any member of staff who has a reasonable belief that there is corruption and fraud relating to any of the matters referred to in clause 4.4 above may raise a concern following the procedures Annexed to this policy as Annexure A
- 6.3. Concerns must be raised in good faith and without malice, and not for personal gain, and the person disclosing information must reasonably believe that the information disclosed and any allegations contained therein, are substantially true.
- 6.4. The issues raised may be relating to a manager, another staff member, a group of staff within the individual's section or division or another section or division of DSBD. The perpetrator could be an official, manager, customer, a former employee, a member of the public, or service provider or a claimant of incentives.



7. PROCEDURE FOR RAISING CONCERNS

7.1. Concerns may be raised with the Chief Audit Executive (CAE), Risk and Ethics Officer, the Director Legal Services or your line manager, either verbally or in writing. Employees are however encouraged to raise their concerns in writing and they could send their concerns to:

- a) Chief Audit Executive (CAE) – 012 394 1433 / Nbuthlezi@dsbd.gov.za
- b) Risk and Ethics Officer – 012 394 1433 / Qramaboa@dsbd.gov.za
- c) Director: Legal Services – 012 394 1433

Postal address:

Private Bag X 672
Pretoria
0001

Physical visit:

77 Mentjies Street
Sunnyside, Trevennaa
Pretoria

The above mentioned officials are also available to meet with any party wishing to make a disclosure at an agreeable location within a reasonable time period.

7.2. If in the view of the whistle blower (internal and/or external) the matter is of such serious nature that he or she cannot raise it with any of the above officials, he or she can raise it with the Director-General, 012 394 1433 / EVries@dsbd.gov.za or the Minister 012 394 5820 / LZulu@dsbd.gov.za or through the National Anti-Corruption Hotline (NACH) using the toll free number – **0800 701 701**.

7.3. Should the employee exhaust all the internal mechanisms, or where the employees has substantial reason to believe that there could be concealment of the investigation or that evidence could be destroyed, or that the matter might not be handled properly, he or she may raise the matter, in good faith, with a member of the Cabinet; or the Public Protector; or the Auditor –General.

7.4. An employee may still, if needing independent advice, contact his or her personal legal advisor, labour organization



8. HANDLING DISCLOSURES

- 8.1. On receipt of a disclosure, the Chief Risk Officer, Director Legal or CAE will initially assess what action would be appropriate in dealing with the matter. This may involve an internal enquiry or a formal investigation as per procedures Annexed to this policy as **Annexure B**
- 8.2. DSBD will acknowledge receipt of the concern within 7 working days of receipt thereof. An indication of how DSBD will deal with the matter will be provided if requested. DSBD will advise the disclosing party of who will be dealing with the matter and his or her contact details, and whether further assistance of the disclosing employee may or will be needed. Should the DSBD decide not to investigate the matter, reasons will be provided to the disclosing employee.
- 8.3. Any whistle blowing matter received internal or through National Hotline referred to the department shall be investigated and completed within 40 days.
- 8.4. Employees must note that the DSBD may not be able to tell them in all cases of the precise action that is or will be taken, where this would infringe on a duty of confidence owed to another person.
- 8.5. In an event that an official provides a report to a manager to action then the manager must acknowledge receipt of the report. The Director General might delegate to any other person or appoint an external service provider to investigate.
- 8.6. A failure by the manager to act upon receiving such a report, especially if such failure led to the reporting official suffering any form of occupational detriment, shall be subjected to disciplinary action.

9. REDRESS

- 9.1. Disclosure may not necessarily be dealt with in the manner in which the disclosing party wishes them to be dealt with, but the DSBD will handle disclosure in a fair, equitable and proper manner.
- 9.2. Should a disclosing employee not be satisfied with the DSBD's response, he or she may

report the matter to another level or body as referred to in this policy in 8.2. and 8.3 above

10. PROTECTION AGAINST OCCUPATIONAL DETRIMENT

10.1. The DSBD management is committed to the provisions of this policy, and will thus ensure that employees who make disclosures in terms of this policy will not be penalized, victimized or subjected to any form of occupational detriment for so doing.

10.2. The Act defines occupational detriment to include being dismissed, suspended, demoted, transferred against their will, harassed or intimidated, refused a reference, as a result of the disclosure.

10.3. This policy shall extend such definition to include proven or tangible victimization such as, but not limited to, inconsistent disciplinary action against the disclosing official, or unfair performance management to reflect poor performance, as a result of the disclosure.

10.4. An employee who raises a concern in good faith in terms of the policy (also referred to as a “whistle-blower”).

10.5. The protection granted in terms of this policy will not be extended to employees who have been found to have raised false accusations maliciously. An employee who makes allegations without having reasonable grounds for believing the allegation to be true may be subjected to disciplinary action.

10.6. Conversely, any official found to have subjected an employee to any form of occupational detriment for the reason that they raised a valid concern in terms of this policy shall be subjected to disciplinary action.

10.7. In such cases where a whistle-blower has a well-founded apprehension of victimization, management must take all reasonable steps to protect the whistle-blower, which may include using job rotation as an interim solution.

I. The Labour Relations, Risk and Ethics Officer and Internal Audit unit must communicate on a regular basis with each other to detect whether cases of disciplinary action such as suspension correspond with whistle-blowers as

recorded in the register of cases reported for investigation.

- II. Grievances lodged relating to alleged unfair performance management should also be compared against cases involving whistle-blowers as recorded in the register of cases reported for investigation, to establish if the grievance supports a case for victimization in terms of this policy.

11. MANAGEMENT COMMITMENT

- 11.1. The DSBD is committed to encouraging a culture that promotes openness, and this will be demonstrated as follows –
 - 11.1.1. The policy will be made accessible to all the DSBD employees, via the intranet, DSBD Blitz, and induction programme. It will also be made available on the internet for the public to access it.
- 11.2. The Risk and Ethics Management Unit within the Office of the Director General: will conduct awareness sessions with DSBD employees on what constituted the illicit conduct envisaged by this policy and its effect on DSBD, while the Labour Relations unit will conduct awareness campaigns on the Public Service Code of Conduct.
- 11.3. The Risk and Ethics Management Unit together with Internal Audit Unit will present to the Risk Management Committee the number of fraud and corruption matters reported and the outcomes thereof.
- 11.4. DSBD subscribes to the National Anti-Corruption Hotline (NACH) administered by Public Service Commission (PSC) for all public institutions. The hotline number is **0800 701 701** and it has been publicized throughout DSBD.
- 11.5. In line with the prescripts of the Promotion of Administrative Justice Act (known as PAJA), all decisions relating to discipline or performance assessment of individuals, as well as decisions relating to cases under investigation, must be recorded in writing. This will encourage transparency as well as encourage retention of documentary evidence if needed.
- 11.6. Management at all levels must be adequately trained to understand how to deal with cases involving whistle-blowers, to ensure that the risk of victimization is constantly managed.

11.7. Management must ensure consistent application of rules, and action must be taken regardless of the rank of officials alleged to have committed misconduct.

12. OWNERSHIP

12.1. The Risk and Ethics Management Unit within the department will administer this Policy.

13. POLICY REVIEW

13.1. This Policy shall be reviewed every three years and/or amended when necessary.



14. RECOMMENDATION AND APPROVAL

14.1. The DSDB Whistle Blowing Policy is duly hereby recommended as amended for the approval by the Director General

Recommendation/s approved

YES




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EDITH VRIES

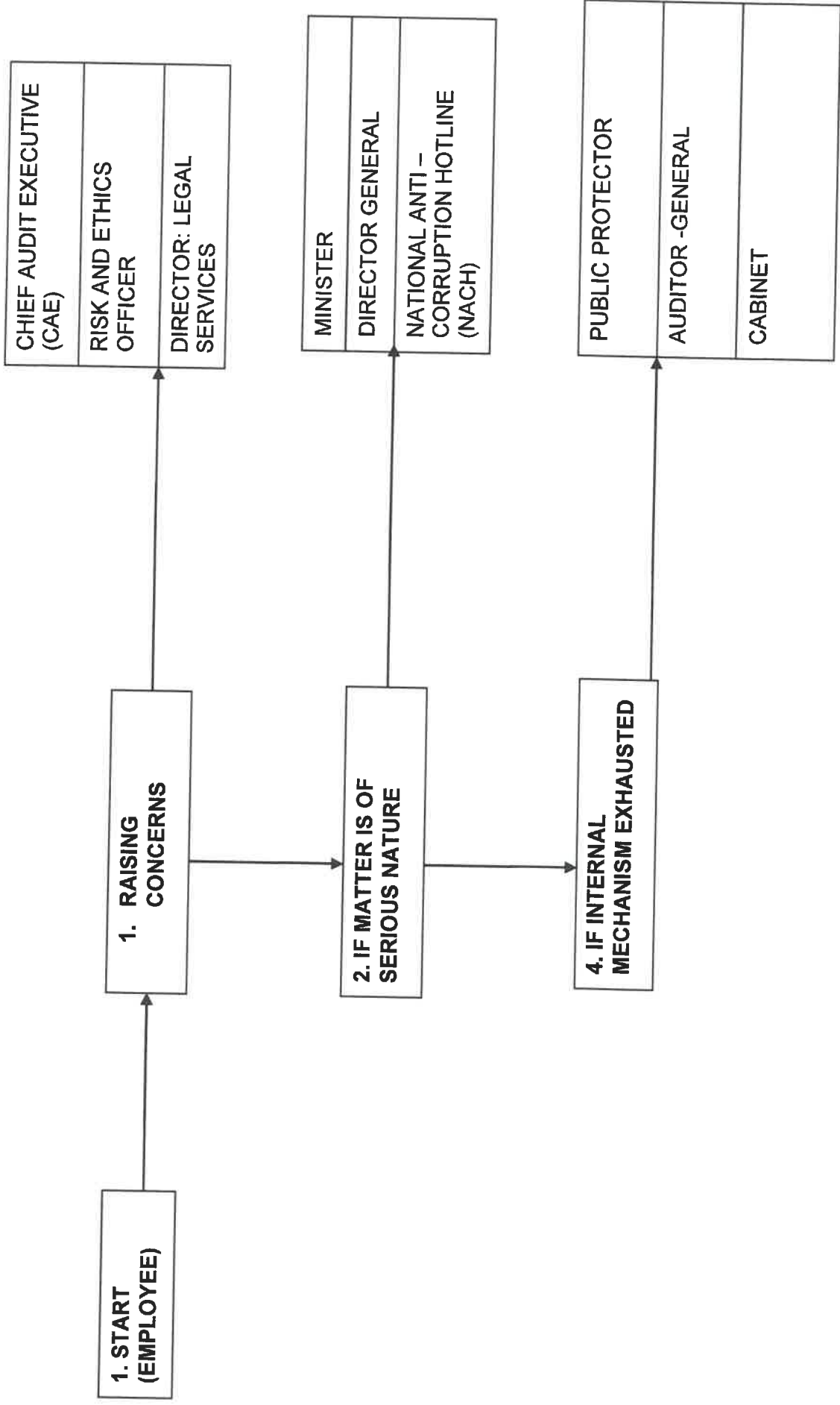
DIRECTOR-GENERAL

DATE:

ANNEXURE A & B

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ANNEXURE A: PROCEDURE FOR RAISING CONCERNS



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ANNEXURE B: PROCEDURE FOR HANDLING CONCERNS

