

私部門之金融揭弊者保護 ——我國草案與美國法之對照*

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摘 要

鑑於金融機構之經濟重大影響性，本文自金融機構角度切入，介紹揭弊者保護理論及相關規範，以凸顯我國揭弊者保護仍為不足之現況，並援引美國法案例與制度，以對我國法務部廉政署研擬，並於 2020 年 4 月 8 日經立委提案之「公益揭弊者保護法草案」做一檢視。本文依據揭弊者與其他行為人間之身分關係，將揭弊者劃分為不同類型，因應各類型揭弊者所面臨之困境，提出相應之保護措施，並以金融機構之產業特性及現存弊病，說明金融機構中揭弊者保護制度建立之必要性。由於我國揭弊者保護相關法制闕漏，且美國法之金融機構吹哨者保護相關法制齊備，如沙賓法（Sarbanes-Oxley Act）、華爾街改革與消費者保護法（Dodd-Frank Wall Street Reform and Consumer Protection Act）即詳盡規範相關保護、獎勵措施，且相關案例繁多可供

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借鑑，因此本文援引美國法案例及制度，以輔助檢視揭弊者保護法草案，以期完善揭弊者保護制度，並對金融機構及主管機關於揭弊者法制建構後，提出相關應行作為建議。

關鍵詞：揭弊者、金融機構、揭弊者保護法草案、沙賓法、華爾街改革
與消費者保護法

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Financial Fraud and Whistleblower Protection — A Comparison Between Taiwan’s Bill and the U.S. Laws

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Abstract

This study focuses on the whistleblower protection policy in Taiwan and compares Taiwan’s policy with the U.S. laws. The financial industry in U.S. has a long history and developed successfully, which could provide Taiwan’s legal reform a reference model. In Taiwan, whistleblower bears unfair burdens and culture stigma. Lacking of sufficient protection forces whistleblower to take risks of personal safety and retaliation in workplace. On the contrast, the U.S. legal system provides whistleblower protection comprehensively including identity’s confidentiality, prevention from workplace retaliation and legal remedies. Corporations are

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required to establish compliant system and protection mechanism. Due to the insufficiency of current whistleblower protection policy, Taiwan's Agency Against Corruption at Ministry of Justice proposed Whistleblower Protection Act in the end of 2018. The bill is now under the review at the Congress. This article will analyze and give comments to the bill as well. Hopefully, Taiwan could own its whistleblower protection law as soon as possible.

Keywords: Whistleblower, Financial Industry, Whistleblower Protection Bill, Sarbanes-Oxley Act, Dodd-Frank Act