



LAWS OF MALAYSIA

ONLINE VERSION OF UPDATED
TEXT OF REPRINT

Act 711

WHISTLEBLOWER PROTECTION ACT 2010

As at 31 August 2016

WHISTLERBLOWER PROTECTION ACT 2010

Date of Royal Assent 2 June 2010

Date of publication in the
Gazette 10 June 2010

LAWS OF MALAYSIA**Act 711****WHISTLEBLOWER PROTECTION ACT 2010**

ARRANGEMENT OF SECTIONS

PART I**PRELIMINARY**

Section

1. Short title and commencement
2. Interpretation

PART II**ADMINISTRATION**

3. General powers of enforcement agency
4. Power of Minister to issue directions
5. Co-operation with other agencies

PART III**WHISTLEBLOWER PROTECTION**

6. Disclosure of improper conduct
7. Whistleblower protection
8. Protection of confidential information
9. Immunity from civil and criminal action
10. Protection against detrimental action
11. Revocation of whistleblower protection

PART IV

DEALING WITH DISCLOSURE OF IMPROPER CONDUCT

Section

12. Investigation of improper conduct
13. Finding of enforcement agency after investigation of improper conduct

PART V

COMPLAINTS OF DETRIMENTAL ACTION AND REMEDIES

14. Investigation into complaints of detrimental action and finding of enforcement agency after investigation
15. Remedies
16. Personal liability
17. Action for injunction
18. Power of the court
19. Relocation of place of employment

PART VI

ENFORCEMENT, OFFENCES AND PENALTIES

20. Power to investigate
21. Penalty for making false statement
22. Penalty for obstructing authorized officer
23. Penalty for destroying, falsifying, *etc.*, document, *etc.*
24. Abetment and attempt
25. General penalty

PART VII

GENERAL

26. Rewards
27. Power of Minister to make regulations

LAWS OF MALAYSIA**Act 711****WHISTLEBLOWER PROTECTION ACT 2010**

An Act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to provide for the matters disclosed to be investigated and dealt with and to provide for other matters connected therewith.

[15 December 2010; P.U. (B) 537/2010]

ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Whistleblower Protection Act 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“enforcement agency” means—

- (a) any ministry, department, agency or other body set up by the Federal Government, State Government or local government including a unit, section, division, department or agency of such ministry, department, agency or body, conferred with investigation and enforcement functions by any written law or having investigation and enforcement powers;
- (b) a body established by a Federal law or State law which is conferred with investigation and enforcement functions by that Federal law or State law or any other written law; or
- (c) a unit, section, division, department or agency of a body established by a Federal law or State law having investigation and enforcement functions;

“public body” includes—

- (a) the Government of Malaysia;
- (b) the Government of a State;
- (c) any local authority and any other statutory authority;
- (d) any department, service or undertaking of the Government of Malaysia, the Government of a State, or a local authority; and
- (e) any company or subsidiary company over which or in which any public body as is referred to in paragraph (a), (b), (c) or (d) has controlling power or interest;

“private body” means an office or entity other than public body;

“improper conduct” means any conduct which if proved, constitutes a disciplinary offence or a criminal offence;

“disciplinary offence” means any action or omission which constitutes a breach of discipline in a public body or private body as provided by law or in a code of conduct, a code of ethics or circulars or a contract of employment, as the case may be;

“confidential information” includes—

- (a) information about the identity, occupation, residential address, work address or whereabouts of—
 - (i) a whistleblower; and
 - (ii) a person against whom a whistleblower has made a disclosure of improper conduct;
- (b) information disclosed by a whistleblower; and
- (c) information that, if disclosed, may cause detriment to any person;

“officer of a public body” means any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds, and, where the public body is a corporation sole, includes the person who is incorporated as such;

“officer of a private body” includes any person who is a member, an office bearer, an officer, an employee, a servant, an employer, a proprietor, a partner and a director of a private body;

“authorized officer” means any officer of any enforcement agency;

“whistleblower” means any person who makes a disclosure of improper conduct to the enforcement agency under section 6;

“whistleblower protection” means protection conferred to a whistleblower under this Act;

“detrimental action” includes—

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) interference with the lawful employment or livelihood of any person, including discrimination, discharge, demotion, suspension, disadvantage, termination or adverse treatment in relation to a person’s employment, career, profession, trade or business or the taking of disciplinary action; and
- (d) a threat to take any of the actions referred to in paragraphs (a) to (c).

PART II

ADMINISTRATION

General powers of enforcement agency

3. (1) The enforcement agency shall have the general direction, control and supervision of all matters relating to whistleblower protection.

(2) For the purpose of this Act, the general powers of the enforcement agency are as follows:

- (a) to receive disclosure of improper conduct;
- (b) to enforce the whistleblower protection;
- (c) to deal with the disclosure of improper conduct;
- (d) to receive complaints of detrimental action;
- (e) to deal with complaints of detrimental action; and

(f) to implement the provisions of this Act.

(3) The enforcement agency shall have power to do all things expedient or reasonably necessary for, or incidental to, the exercise of his general powers under subsection (2).

Power of Minister to issue directions

4. The Minister may give to the enforcement agency directions of a general character not inconsistent with this Act as to the exercise of the powers and discretions conferred on the enforcement agency by this Act and the duties required to be discharged by the enforcement agency under this Act and the enforcement agency shall give effect to all such directions.

Co-operation with other agencies

5. (1) In exercising its investigation powers, any enforcement agency may work in co-operation with any other enforcement agencies and any Federal or State Government departments or other persons as the enforcement agency deems appropriate.

(2) The enforcement agency may consult with and disseminate intelligence and information to any other enforcement agencies and such other persons as the enforcement agency deems appropriate.

(3) If the enforcement agency disseminates intelligence or information to any other enforcement agency or person under subsection (2), that enforcement agency or person is subject to section 8.

(4) Upon any request by the enforcement agency for co-operation for the purpose of implementing this Act, any person to whom such request is made shall render all such necessary assistance as required by the enforcement agency.

PART III

WHISTLEBLOWER PROTECTION

Disclosure of improper conduct

6. (1) A person may make a disclosure of improper conduct to any enforcement agency based on his reasonable belief that any person has engaged, is engaging or is preparing to engage in improper conduct:

Provided that such disclosure is not specifically prohibited by any written law.

(2) A disclosure of improper conduct under subsection (1) may also be made—

- (a) although the person making the disclosure is not able to identify a particular person to which the disclosure relates;
- (b) although the improper conduct has occurred before the commencement of this Act;
- (c) in respect of information acquired by him while he was an officer of a public body or an officer of a private body; or
- (d) of any improper conduct of a person while that person was an officer of a public body or an officer of a private body.

(3) A disclosure of improper conduct under subsection (1) may be made orally or in writing provided that the authorized officer, upon receiving any disclosure made orally, shall as soon as it is practicable, reduce it into writing.

(4) A disclosure made in relation to a member of Parliament or a State Legislative Assembly shall not amount to a breach of privilege.

(5) Any provision in any contract of employment shall be void in so far as it purports to preclude the making of a disclosure of improper conduct.

Whistleblower protection

7. (1) A whistleblower shall, upon receipt of the disclosure of improper conduct by any enforcement agency under section 6, be conferred with whistleblower protection under this Act as follows:

- (a) protection of confidential information;
- (b) immunity from civil and criminal action; and
- (c) protection against detrimental action,

and for the purpose of paragraph (c), the protection shall be extended to any person related to or associated with the whistleblower.

(2) A whistleblower protection conferred under this section is not limited or affected in the event that the disclosure of improper conduct does not lead to any disciplinary action or prosecution of the person against whom the disclosure of improper conduct has been made.

(3) This Act does not limit the protection conferred by any other written law to any person in relation to information given in respect of the commission of an offence.

Protection of confidential information

8. (1) Any person who makes or receives a disclosure of improper conduct or obtain confidential information in the course of investigation into such disclosure shall not disclose the confidential information or any part thereof.

(2) Subject to subsection (3), confidential information shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(3) If any books, documents or papers which are in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority whatsoever contain any entry in which any whistleblower is named or described or which might lead to his discovery, the court, tribunal or other authority before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the whistleblower from discovery, but no further.

(4) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Immunity from civil and criminal action

9. Subject to subsection 11(1), a whistleblower shall not be subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, and no action, claim or demand may be taken or made against the whistleblower for making a disclosure of improper conduct.

Protection against detrimental action

10. (1) No person shall take detrimental action against a whistleblower or any person related to or associated with the whistleblower in reprisal for a disclosure of improper conduct.

(2) A whistleblower may make a complaint to any enforcement agency of any detrimental action committed by any person against the whistleblower or any person related to or associated with the whistleblower.

(3) A person is deemed to take detrimental action against a whistleblower or any person related to or associated with the whistleblower if—

- (a) the person takes or threatens to take the detrimental action because—
 - (i) a whistleblower has made a disclosure of improper conduct; or
 - (ii) the person believes that a whistleblower has made or intends to make a disclosure of improper conduct; or
- (b) the person incites or permits another person to take or threaten to take the detrimental action for any reason under subparagraph (a)(i) or (ii).

(4) Nothing in this section shall affect the whistleblower protection to an employee in the private body either at law or under a collective agreement or employment contract.

(5) No person acting or purporting to act on behalf of any public body or private body shall—

- (a) terminate a contract;
- (b) withhold a payment that is due and payable under a contract; or
- (c) refuse to enter into a subsequent contract,

solely for the reason that a party to the contract or an employee or employer of a party to the contract has made a disclosure of improper

conduct to any enforcement agency relating to the public body or private body.

(6) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding fifteen years or to both.

(7) In any proceedings, it lies on the defendant to prove that the detrimental action shown to be taken against a whistleblower or any person related to or associated with the whistleblower is not in reprisal for a disclosure of improper conduct.

Revocation of whistleblower protection

11. (1) The enforcement agency shall revoke the whistleblower protection conferred under section 7 if it is of the opinion, based on its investigation or in the course of its investigation that—

- (a) the whistleblower himself has participated in the improper conduct disclosed;
- (b) the whistleblower wilfully made in his disclosure of improper conduct a material statement which he knew or believed to be false or did not believe to be true;
- (c) the disclosure of improper conduct is frivolous or vexatious;
- (d) the disclosure of improper conduct principally involves questioning the merits of government policy, including policy of a public body;
- (e) the disclosure of improper conduct is made solely or substantially with the motive of avoiding dismissal or other disciplinary action; or

(f) the whistleblower, in the course of making the disclosure or providing further information, commits an offence under this Act.

(2) If the whistleblower protection has been revoked, the enforcement agency shall give a written notice to that effect to the whistleblower.

(3) Any person aggrieved by the decision of the enforcement agency may refer the decision of the enforcement agency to the court for determination.

(4) The court may make an order for the preservation of the whistleblower protection and may also make such consequential orders necessary to give effect to the order for relief.

PART IV

DEALING WITH DISCLOSURE OF IMPROPER CONDUCT

Investigation of improper conduct

12. Each enforcement agency which receives a disclosure of improper conduct under section 6 shall conduct its own investigation and prepare a report which contains—

- (a) the finding of the investigation; and
- (b) the recommendations for further steps to be taken, if any, based on the finding of the investigation.

Finding of enforcement agency after investigation of improper conduct

13. (1) If the report under section 12 makes a finding that—

- (a) the disclosure of improper conduct is not substantiated, the enforcement agency shall inform the whistleblower;
- (b) the improper conduct constitutes a disciplinary offence, the enforcement agency shall make a recommendation to the appropriate disciplinary authority or other appropriate authority in the case of a public body or to the employer or other appropriate person in the case of a private body to initiate disciplinary proceedings or to take such steps as it deems appropriate against the officer of the public body or the officer of the private body who had committed the improper conduct; or
- (c) the improper conduct constitutes a criminal offence and in the case where—
 - (i) the Public Prosecutor decides to prosecute, the enforcement agency shall obtain from the Public Prosecutor periodical reporting until the matter has been duly disposed of; or
 - (ii) the Public Prosecutor decides not to prosecute, the enforcement agency shall inform the whistleblower.

(2) Where the enforcement agency has referred a matter under paragraph (1)(b), the appropriate disciplinary authority or other appropriate authority or the employer or other appropriate person shall inform the enforcement agency—

- (a) the steps taken, or intended to be taken, to give effect to the finding and recommendation within six months from the date of receipt of the finding and recommendation; or
- (b) the reason for not initiating any disciplinary proceedings or for not taking the steps recommended by the enforcement agency within fourteen days of making such decision,

as the case may be.

(3) If, after considering any information provided by the appropriate disciplinary authority or other appropriate authority or employer or other appropriate person, it appears to the enforcement agency that insufficient steps or no action has been taken to give effect to the finding or recommendation within a reasonable time, the enforcement agency may report to the Minister on the investigation, finding, recommendation and the response to the finding and recommendation.

(4) The enforcement agency shall inform the whistleblower of the result of the investigation and any action taken by the appropriate disciplinary authority or the other appropriate authority, the employer or the other appropriate person or the Public Prosecutor, as the case may be.

PART V

COMPLAINTS OF DETRIMENTAL ACTION AND REMEDIES

Investigation into complaints of detrimental action and finding of enforcement agency after investigation

14. (1) Where any enforcement agency receives a complaint of detrimental action, the enforcement agency shall commence investigation into the complaint of detrimental action.

(2) Where the enforcement agency has completed the investigation into any complaint of detrimental action under this Act, the enforcement agency shall record its finding and compile its report and investigation papers and refer the matter to the Public Prosecutor and if the investigation reveals that—

(a) the complaint is not substantiated, the enforcement agency shall inform the whistleblower;

- (b) the complaint constitutes a disciplinary offence, the enforcement agency shall make a recommendation to the appropriate disciplinary authority or other appropriate authority in the case of a public body or to the employer or other appropriate person in the case of a private body to initiate disciplinary proceedings or to take such steps as it deems appropriate against the officer of the public body or the officer of the private body who had taken the detrimental action against the whistleblower; or
- (c) the complaint constitutes a criminal offence and in the case where—
 - (i) the Public Prosecutor decides to prosecute, the enforcement agency shall obtain from the Public Prosecutor periodical reporting until the matter has been duly disposed of; or
 - (ii) the Public Prosecutor decides not to prosecute, the enforcement agency shall inform the whistleblower.

(3) Where the enforcement agency has referred a matter under paragraph (2)(b), the appropriate disciplinary authority or other appropriate authority or the employer or other appropriate person shall inform the enforcement agency—

- (a) the steps taken, or intended to be taken, to give effect to the finding and recommendation within six months from the date of receipt of the finding and recommendation; or
- (b) the reason for not initiating any disciplinary proceedings or for not taking the steps recommended by the enforcement agency within fourteen days of making such decision,

as the case may be.

(4) If, after considering any information provided by the appropriate disciplinary authority or other appropriate authority or employer or other appropriate person, it appears to the enforcement agency that insufficient steps or no action has been taken to give effect to the finding or recommendation within a reasonable time, the enforcement agency may report to the Minister on the investigation, finding, recommendation and the response to the finding and recommendation.

(5) Where a charge is preferred by the Public Prosecutor, any evidence obtained by the enforcement agency under this Act may, notwithstanding the provisions of any other written law to the contrary but subject to section 8, be used for the purpose of criminal proceedings.

(6) The enforcement agency shall inform the whistleblower of the result of the investigation and any action taken by the appropriate disciplinary authority or the other appropriate authority, the employer or the other appropriate person or the Public Prosecutor, as the case may be.

Remedies

15. (1) Upon request made by a whistleblower—

- (a) within three months after being informed by the enforcement agency under subsection 14(6) that detrimental action in reprisal for a disclosure of improper conduct has been taken against him; or
- (b) at any time that the whistleblower fears that detrimental action in reprisal for a disclosure of improper conduct may be taken against him,

the enforcement agency may seek the following remedies from the court:

- (A) damages or compensation;

- (B) injunction; or
- (C) any other relief as the court deems fit.

(2) Notwithstanding subsection (1), the whistleblower or any person related to or associated with the whistleblower shall be entitled to seek the remedies under paragraphs (1)(A) to (C).

(3) Where the whistleblower or any person related to or associated with the whistleblower intends to seek the remedies through another person other than the enforcement agency after a request under subsection (1) has been made, the whistleblower or any person related to or associated with the whistleblower shall notify the enforcement agency of such intention.

(4) Upon receipt of the notification under subsection (3) or the enforcement agency discovers that the whistleblower or any person related to or associated with the whistleblower has sought the remedies through another person other than the enforcement agency after a request under subsection (1) has been made, the enforcement agency may make an application to the court to discharge itself or otherwise discontinue from representing the whistleblower or any person related to or associated with the whistleblower and the whistleblower or any person related to or associated with the whistleblower shall reimburse the enforcement agency for any expenses incurred.

Personal liability

16. (1) A person against whom any civil action is taken for committing a detrimental action against a whistleblower or any person related to or associated with the whistleblower in reprisal for a disclosure of improper conduct shall be sued and be liable for the damages or compensation under paragraph 15(1)(A) in his personal capacity.

(2) The right of a whistleblower or any person related to or associated with the whistleblower to bring proceedings for damages

does not affect any other right or remedy that may be available to him under any other written law.

Action for injunction

17. (1) The court shall have power in any application for injunction under paragraph 15(1)(B) to order any person to refrain from continuing, repeating or threatening to continue or repeat the act of detrimental action against a whistleblower or any person related to or associated with the whistleblower.

(2) Pending the final determination of an application referred to in subsection (1), the court may grant an interim injunction.

Power of the court

18. (1) If, on receipt of an application under this Part, the court is satisfied that a person has taken or intends to take detrimental action in reprisal for a disclosure of improper conduct, the court may make the following orders against the person who takes the detrimental action:

- (a) an order to pay damages, compensation, costs, interest or any other form of pecuniary relief to the whistleblower or any person related to or associated with the whistleblower;
- (b) an injunction order restraining him from continuing, repeating, threatening to continue or repeat, taking, causing or inflicting the detrimental action against the whistleblower or any person related to or associated with the whistleblower in any manner; and
- (c) any other relief as the court deems fit.

(2) In furtherance to the power of the court under subsection (1), the court may, pursuant to any application under paragraph 15(1)(C),

by order, require the head of a public body or employer or other appropriate person in the private body to take all necessary measures to—

- (a) permit the whistleblower or any person related to or associated with the whistleblower to return to his duties;
- (b) reinstate the whistleblower or any person related to or associated with the whistleblower or pay compensation in lieu of reinstatement;
- (c) pay to the whistleblower or any person related to or associated with the whistleblower compensation in an amount not greater than the amount that is equivalent to the remuneration that would, but for the detrimental action, have been paid to the whistleblower or any person related to or associated with the whistleblower;
- (d) rescind or cease any measure or action, including any disciplinary action, and pay compensation to the whistleblower or any person related to or associated with the whistleblower in an amount not greater than the amount that is equivalent to any financial or other penalty imposed on the whistleblower or any person related to or associated with the whistleblower;
- (e) pay to the whistleblower or any person related to or associated with the whistleblower an amount equal to any expenses and any other financial losses incurred by the whistleblower or any person related to or associated with the whistleblower as a result of the detrimental action;
- (f) compensate the whistleblower or any person related to or associated with the whistleblower for any pain and suffering arising from the detrimental action;
- (g) grant the relief provided in the decision effective upon the making of the decision, which shall remain in effect

pending the outcome of any appeal against such decision unless—

(i) the appellate court determines that the granting of such relief is not appropriate; or

(ii) the relief granted in the decision provides that the whistleblower or any person related to or associated with the whistleblower shall return or be present at the place of employment during the period pending the outcome of any appeal, and the head of the public body or the employer or other appropriate person in the private body determines that the return or presence of the whistleblower or any person related to or associated with the whistleblower is unduly disruptive to the work environment in which case, the whistleblower or any person related to or associated with the whistleblower shall receive salary, compensation, and all other benefits of appointment or employment during the period pending the outcome of any appeal; or

(h) take or effect personnel action or any other appropriate action to restore the whistleblower or any person related to or associated with the whistleblower to a position that the whistleblower or any person related to or associated with the whistleblower would have been in but for the detrimental action.

(3) For the purpose of paragraph (2)(h), “personnel action” means—

(a) an appointment;

(b) a promotion;

(c) a disciplinary or corrective action;

- (d) a transfer or reassignment;
- (e) a reinstatement;
- (f) a restoration;
- (g) a re-employment;
- (h) a performance evaluation;
- (i) a decision concerning pay, benefits, awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or performance or evaluation; or
- (j) any other significant change in duties, responsibilities or working conditions.

Relocation of place of employment

19. (1) A whistleblower or any person related to or associated with the whistleblower who fears or has suffered detrimental action may request to the enforcement agency to apply in writing, for and on his behalf, to the relevant public body or employer or other appropriate person in the private body for relocation of his place of employment.

(2) If the public body or the employer or other appropriate person in the private body considers—

- (a) that there is a danger or likelihood that detrimental action may be taken against the whistleblower or any person related to or associated with the whistleblower if he continues to hold his current position; or

- (b) that the whistleblower or any person related to or associated with the whistleblower had in fact suffered detrimental action; and
- (c) that the only practical means of removing or substantially removing the danger or the effect of the detrimental action is by way of relocation of his place of appointment,

the public body or the employer or other appropriate person in the private body shall, as far as practicable, make arrangements for the relocation in the public body or private body, as the case may be.

PART VI

ENFORCEMENT, OFFENCES AND PENALTIES

Power to investigate

20. For the purposes of carrying out investigation under this Act, the authorized officer shall have all the powers of investigation as provided for under the relevant laws applicable to the relevant enforcement agency.

Penalty for making false statement

21. Any person who wilfully makes in his disclosure of improper conduct or complaint of detrimental action a material statement which he knew or believed to be false or did not believe to be true commits an offence.

Penalty for obstructing authorized officer

22. Any person who obstructs any authorized officer in the performance of his duties under this Act commits an offence.

Penalty for destroying, falsifying, etc., document, etc.

23. Any person who, knowing that a document or thing is relevant to an investigation under this Act—

- (a) destroys, mutilates or alters the document or thing;
- (b) falsifies the document or makes a false document;
- (c) conceals the document or thing; or
- (d) directs, counsels or causes, in any manner, a person to do anything mentioned in paragraphs (a) to (c),

commits an offence.

Abetment and attempt

24. (1) A person who abets the commission of or who attempts to commit any offence under this Act commits that offence and shall, on conviction, be liable to the punishment provided for that offence.

(2) A person who does any act preparatory to or in furtherance of the commission of any offence under this Act commits that offence and shall, on conviction, be liable to the punishment provided for the offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

General penalty

25. Any person who commits an offence under this Act which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

PART VII

GENERAL

Rewards

26. The enforcement agency may order such rewards as it deems fit to be paid to the whistleblower for—

- (a) any disclosure of improper conduct; or
- (b) any complaint of detrimental action in reprisal for a disclosure of improper conduct,

which leads to the detection of cases on improper conduct or detrimental action or prosecution of the person against whom the disclosure of improper conduct was made or the person who commits the detrimental action.

Power of Minister to make regulations

27. (1) The Minister may make such regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for all or any of the following purposes:

- (a) providing for the form of any notice, order, declaration or other matter under this Act; and
 - (b) providing for the service or delivery of any notice, order, direction, instruction, requirement or other thing lawfully done under this Act.
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LAWS OF MALAYSIA

Act 711

WHISTLEBLOWER PROTECTION ACT 2010

LIST OF AMENDMENTS

Amending law

Short title

In force from

-NIL-

LAWS OF MALAYSIA

Act 711

WHISTLEBLOWER PROTECTION ACT 2010

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
	-NIL-	
