



MESSAGE FROM THE CEO'S DESK

Corruption and bribery is probably one of the most serious crimes in the world that leads to a degeneration of most countries' economic development and social upliftment. Business plays a critical role in identifying, reporting and deterring such activities. Although many organisations in the private sector may not recognise the severe impact of corrupt and unethical behaviour on the organisation itself, the latter has a direct impact on positive growth and development of the business sector in the country, especially its bottom line. BACSA and its partners have adopted a no tolerance approach to bribery and corruption and urges all business entities to take a pro-active approach in support of this stance. This article is important to every level of leadership within the business sector therefore, effective compliance with the **Prevention and Combating of Corrupt Activities Act, No. 12 of 2004** is imperative is.

South Africa is party to the **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**. South Africa is also a Member of the **OECD Working Group** on Bribery in International Business Transactions which is responsible for monitoring the implementation and enforcement of the OECD Convention.

Article 1 of the Convention requires of State Parties to criminalise the offering, promising or giving of any undue pecuniary or other advantage to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

South Africa criminalized the above provision in Section 5 of the **Prevention and Combating of Corrupt Activities Act, No 12 of 2004**. This section provides as follows:

1. Any person who, directly or indirectly, gives or agrees or offers to give any [gratification](#) to a [foreign public official](#), whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner
 - a. that amounts to the -
 - i. illegal, dishonest, unauthorised, incomplete, or biased; or
 - ii. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - b. that amounts to the -
 - i. abuse of a position of authority;
 - ii. a breach of trust; or
 - iii. the violation of a legal duty or a set of rules;

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Adri Sini Pillay-van Groen
Chief Executive Officer
Business Against Crime South Africa

"You can prevent unnecessary road carnage. Choose to test yourself ... Choose to save lives. Do not drive if your blood alcohol content exceeds the legal limit."





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- c. designed to achieve an unjustified result; or
 - d. that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to foreign public officials.
2. Without derogating from the generality of section 2(4), "to act" in subsection (1) includes:
- a. the using of such foreign public officials' or such others persons' position to influence any acts or decisions of the foreign state or public international organisation concerned; or
 - b. obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation.

Foreign Public Official is defined in Section 1 of The Act as:

- a. any person holding a legislative, administrative or judicial office of a foreign state;
- b. any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or
- c. an official or agent of a public international organisation.

It is important to note that The Act has extra-territorial application. In other words, even if the corrupt act occurred outside the Republic, regardless of whether the act constitutes an offence at the place of its commission, courts in SA will have jurisdiction if the person to be charged:

- Is a citizen of the RSA;
- Ordinarily resident of the RSA;
- Was arrested in South African territory at the time of the offence;
- Is a company, incorporated or registered, in the RSA; or
- Any body of persons, corporate or incorporated, in the Republic.

Certain persons (CEO's / managers / partners, etc) who hold a position of authority are compelled by section 34 of the Act to report their knowledge or suspicion of any form of corruption or common law offences such as, inter alia, fraud and theft to the DPCI. Failure to do so constitutes an offence.

Access the South African Police Services website and click on the Hawks icon for access to the forms that must be completed. You will be advised on how to submit the forms to the DPCI.

Persons who are not defined as a person who hold a position of authority are also encouraged to report corruption-related offences to their nearest police station or to submit such complaints to Crime Stop. Should you have any queries or questions, please email me at simi@bac.org.za.

"Corruption is authority plus monopoly minus transparency."

- Unknown





ECONOMIC CRIME ON THE RISE

The fastest-growing economic crime category in South Africa is bribery and corruption, which together with procurement and human resources fraud as well as financial statement fraud, sets local organisations above their global counterparts – but in a negative way.

PricewaterhouseCoopers (PwC) **Global Economic Crime Survey** (GECS) 2014 reported that economic crime remains a serious challenge to business leaders, government officials and private individuals in South Africa with 69% of South African respondents indicating that they had been subjected to some form of economic crime in the 24 months preceding the survey, compared to 37% of global respondents.

PwC's National Forensic Services Leader, Louis Strydom, reported that *"the purpose of the survey is to inform South African business leaders about developments in the continuously changing landscape of economic crime in our country and to encourage debate around strategic and emerging issues in this sphere. Our 2014 survey shows that economic crime remains a serious issue affecting South African organisations"*.

During the fourth quarter of 2013, PwC conducted an online survey in which 5,128 senior businessmen and women from 93 countries participated. 137 respondents from organisations in 17 industry sectors in South Africa participated to give their insights into the problem.

Asset misappropriation leads on the list of the so-called 'big three' economic crimes, followed by human resource fraud and bribery and corruption. The types of economic crime experienced by South Africans are:

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| - Asset misappropriation 77% (globally 69%); | Cybercrime 26% (24%); |
| - Procurement fraud 59% (29%); | Money-laundering 14% (11%); |
| - Bribery and corruption 52% (27%); | Tax fraud 11% (6%); and, |
| - Human resources fraud* 42% (15%); include false wage claims, ghost or fictitious employees, fraudulent reduction in payroll taxes; | Illegal insider trading 9% (5%). |
| - Financial-statement fraud 35% (22%); | |

Other key findings of the report include:

- There has been an alarming shift in the perpetrator profile in South Africa. Senior Management is now the main perpetrator of economic crimes committed by insiders.
- The typical perpetrator of insider fraud in South Africa is male, aged between 31 and 40, has a tertiary qualification and has been with his employer for more than 10 years.
- Bribery and corruption has been the fastest growing economic crime category in South Africa since 2011.
- Globally, the Construction, Energy and Mining Sectors experience the most bribery.
- South African organisations suffer significantly more procurement fraud, human resources fraud, bribery and financial statement fraud than organisations globally.
- Competition law infringement is poorly understood by South African organisations. A significant percentage of respondents were unsure whether their organisations had experienced such a contravention and did not know what the potential consequences of an infringement would be.
- Formal fraud risk management programmes have become the most effective fraud detection method. Despite this, a significant portion of South African organisations do not carry out fraud risk assessments.

PwC expressed their hope that the information contained in the GECS 2014 survey will assist readers in their ongoing endeavours to curb economic crime. To download the full report, visit http://www.pwc.co.za/en_ZA/za/assets/pdf/global-economic-crime-survey-2014.pdf