

CONFIDENTIAL

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NATIONAL AND TRANSNATIONAL BEST PRACTICE MODELS FOR THE PREVENTION OF CORRUPTION AND CORPORATE IRREGULARITIES

Poor governance practices, irregularities and unethical behaviour have a significantly negative impact on the professional service delivery, reputation and, ultimately, profit of a company such as yours. New local and international laws call for a recommitment to sound corporate- and ethics-governance principles by company directors and senior officers.

The United Kingdom's Bribery Act of 2010 aims to establish one of the most far-reaching anti-corruption initiatives in the world. The Act provides for strict criminal liability for companies that negligently fail to prevent their employees or agents from engaging in bribery. This is the case even when the company's management had no knowledge of the corruption, fraud or bribery. In such circumstances, management need to demonstrate that they have an adequate fraud- and bribery-prevention scheme, or "adequate procedures" to prevent bribery.

The United Nations Global Compact states that the rapid development of rules of corporate governance around the world is prompting companies to focus on anti-corruption measures as part of their mechanisms to protect their reputations and the interests of their shareholders. The internal controls of companies are increasingly being extended to a range of ethics and integrity issues.

The same approach is promoted in the United States, where the US Federal Sentencing Guidelines require organisations to take active steps to prevent crimes from happening. Failure to do so may lead to heavier penalties.

The adoption and implementation of the South African Companies Act of 2008 introduces a higher level of accountability for company directors and echoes international standard-setting guidelines. The Act places onerous duties on directors (and prescribed officers) and requires them to illustrate that they acted with care, skill, and diligence and with good faith in managing the affairs of their company. If a personal conflict of

interest or breach of trust leads to prejudice, directors may jointly and severally be held liable in their personal capacity for damages so incurred.

The King 3 report on corporate governance prescribes the adoption of an ethics-management programme in order to build a climate of honesty and to maintain a culture of integrity. Ethics training is seen as central to a responsible ethics-management process. Although King 3 does NOT constitute legislation, it sets the standard of best practice in South Africa. Corporate-governance practices, ethics codes and guidelines lift the bar of what are regarded as appropriate standards of conduct. Consequently, any failure to meet a recognised standard of governance, albeit not legislated, may render a board or individual director liable at law.

In the light of King 3, the new Companies Act and international best-practice guidelines and legislation, it is suggested that organisations actively implement ethics programmes (which includes ethics training) with structures and policies designed to prevent corporate crime and irregularities.

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