

Corporates need to step up to fight corruption

Although state capture and the impact it is having on government has been front of mind for some time, the KPMG matter has recently turned the light on the need to fight corruption and maladministration in the private sector too.



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Webber Wentzel, together with their alliance partner Linklaters, recently hosted a seminar entitled ‘Anti-corruption and Good Corporate Governance - Local and International Trends, Themes and Developments’. The seminar urged corporate South Africa to take the lead in fighting corruption and maladministration. It explained the anti-corruption legal landscape and explored some of the hurdles around preventing corruption in South Africa today.

Legal framework

In terms of setting out the legal landscape, South Africa has many statutes aimed at rooting out corrupt activity. To cherry-pick a few: The Prevention and Combating of Corrupt Activities Act defines and criminalises corruption in very broad terms; the Auditing Act also deals with corruption, and requires auditing firms to report any suspected corruption to the regulator - even before notifying their clients; and the Companies Act and the Financial Intelligence Centre Act also have provisions dealing with corruption. Whistle-blowers are protected in South Africa through the Protected Disclosures Act which makes provision for employees to report any irregular and unlawful activities by colleagues and employers, and protects them from ‘occupational detriment’ resulting from these disclosures.

Despite having a fairly sophisticated legislative framework - corrupt activities still take place. The seminar unpacked some of the possible reasons for this.

Poor ethics

The first is that to some degree, there may be poor corporate ethical culture and governance. Compliance for some businesses is a tick box exercise and does not involve genuine moral commitment. Business leaders were urged to make real moves towards a strong culture of good corporate governance, from CEOs to ground-level staff. Giles White, Webber Wentzel Executive Consultant, urged the country’s top management to instill this culture into their organisations through

example. “It is possible to operate in difficult environments and operate to high standards, but you really do have to pay attention to the detail” he said. “Slogans are not enough; they need serious work that backs them up, and this starts with the tone of your leadership.”

Unlawful vs corrupt conduct

Another challenge facing business when it comes to tackling corruption is an understanding of the impact of the law on certain conduct. Prelisha Singh, a Partner at Webber Wentzel, explained that there is a spectrum of conduct which should be scrutinised: on the one end there is maladministration and on the other there is corruption. In between there are unlawful arrangements. She noted that often what people consider corruption is actually an unlawful arrangement, and these are two very different legal animals. Unlawful conduct is not necessarily corrupt conduct.

Adding to this, Webber Wentzel Partner, Kerry Williams, also explained that the discourse around corruption in South African often conflates unlawful conduct with corrupt conduct. Additionally because there are often values that underlie the assessment of what is unlawful - and different people may have different versions on these values - there are grey areas which may be legitimate to dispute. This creates a further level of complexity when distinguishing between unlawful conduct and corrupt conduct.

In response to addressing some of this complexity, Priyesh Daya, Webber Wentzel partner, suggested that policy makers may need to start looking at simplifying certain laws and codes. He gave the example of the King Code on Good Corporate Governance which has been simplified by significantly reducing the number of principles from 75 to just under 20. A simpler legal structure, akin to the King Code, may be a way of ensuring better buy-in.

Political unwillingness

Finally, and perhaps most importantly, the lack of political will to address corruption was raised as a key concern. The point was made that South Africa appears to be failing when it comes to investigating, policing and prosecuting corruption. “Corruption is a systemic issue, it doesn’t materialise suddenly; it is a failure of political and corporate governance and a loss of faith in policing and prosecuting authorities” said Kerry Williams.

As systematic failures in governance increase and as the people of South Africa lose trust in the public sector's ability to prevent corruption - the private sector must step up. Failing to lead at a time like this will further erode the rule of law, decrease foreign direct investment and increased civil disorder. The private sector needs to rise to the challenge and become more active in the fight against corruption and maladministration.