

BUSA APPROACH TO INTEGRITY IN BUSINESS

DISCUSSION DOCUMENT – 1 SEPTEMBER 2017

INTRODUCTION

South Africans are increasingly aware of the scourge of corruption that is stifling the country. Although there have been numerous media reports laying out the details of the corruption, it was the release of the previous public protector's report 'The State of Capture' which consolidated these allegations. Since then, a number of reports, including those produced by the South African Council of Churches, OUTA and the State Capacity Research Project 'The Betrayal of Promise', have shed light on the extent to which the state has been captured and the extent to which corporates and sections of the business sector have been complicit. More evidence continues to flow from the tranche of over 200 000 emails and documents that have been released as part of the #GuptaLeaks.

Data reflects a disturbing increase in the incidence and perceptions of corruption in South Africa. The 2016 Transparency International Corruption Perceptions Index found South Africa to be the most corrupt country in Africa by respondents in the Global Corruption Barometer on Africa. Furthermore, it is clear that there are sectors of the economy that are particularly vulnerable to corruption, including private sector provision of services to state owned enterprises and government departments.

While corruption is not new, it is a significant barrier to South Africa's sustainable economic, political and social progress. The negative impact of corruption on the economy and on South Africa's ability to deliver inclusive growth and transformation cannot be ignored. Corruption not only discourages long-term and foreign direct investment but also diverts limited public financial resources that are required, both to provide much needed social support as well as to stimulate the economy and create jobs. Furthermore, it increases the risk of further sovereign ratings downgrades, with extremely negative ramifications for the country. According to the OECD, corruption has contributed to the sharp rise in income and wealth inequality that they have observed over the last decades.

The current situation underscores the importance and urgency of intensifying efforts to improve governance frameworks and strengthen actions that improve the prevention, detection and punishment of corruption. A critical determinant in turning the tide against corruption is recognising, as envisaged in the National Development Plan, that South Africa needs a capable state and active citizenry to address a lack of effective, competent and capable governance. Corruption will continue to go unchecked until proper accountability, coupled with transparency and capable, credible oversight measures are put in place by all social actors.

Part of the public's frustration and concern is the culture of impunity that has taken hold in South Africa. There is no trust in the justice system, as the SAPS, Hawks and NPA fail to act and prosecute, despite evidence of criminal activities being in the public domain.

What then is the role of business in addressing corruption? Clearly, there is an onus on business to take decisive action to root out corruption in all its forms. Remaining silent or failing to act against corruption serves only to endorse and enable corrupt activities. But there is also a need to entrench and embed integrity as one of the most desirable values in business.

The enormity and complexity of this challenge is not to be underestimated, and to this extent this document does not seek to provide a masterplan for business, but rather to identify the guiding principles for business on tackling corruption and to suggest some concrete actions for discussion and implementation.

GUIDING PRINCIPLES FOR ADDRESSING CORRUPTION & EMBEDDING INTEGRITY

The following guiding principles to address corruption and embed integrity inform this work for BUSA and its members:

1. Embed a culture whereby the highest ethical standards, levels of accountability, and good governance principles must be implemented and enforced by business.
2. A transparent, zero-tolerance approach must be adopted, and for those that are found to be involved in corruption, there must be legal and visible consequences.
3. Business should implement processes, controls and procedures to ensure compliance with anti-corruption legislation, including creating the conditions to enable whistleblowers to come forward.

RECOMMENDATIONS FOR BUSINESS

1. Adopting the highest ethical standards, levels of accountability, and good governance principles. These must be implemented and enforced.

While many businesses already have significant internal checks and balances in place through good governance and management tools, the current situation in the country demonstrates that it is not enough, and that more can and must be done. Given current circumstances, it is imperative that every company, executive and employee understands and implements a culture of good corporate governance - this has to be driven from the top and embedded at every level in business.

Small to medium sized businesses are also vulnerable as they may lack the internal capacity to develop, implement and monitor compliance policies and programmes.

Compliance and oversight procedures and policies should be refocused on identifying corruption. Self-detection is critical for companies. According to analysis by the OECD (2014) 31% of foreign bribery cases since 1999 were detected through self-reporting; of those, 31% emerged through internal audits, and 28% through M&A due diligence.

However, it is clear from evidence of corrupt activities in the public domain, that despite companies having the best governance processes, policies, compliance procedures and oversight by auditors, corruption often goes undetected.

RECOMMENDATIONS

- Business leadership should drive processes to strengthen, or where not already in place, implement internal controls, ethics and compliance programmes or measures to prevent and detect corruption.
- Business leaders must drive the anti-corruption message internally and build a culture of clean and ethical business practices. This requires strong, explicit and visible support and commitment from all leadership. Larger businesses should consider designating internal champions to drive implementation.
- Business leaders should ensure a culture that creates an environment that enables whistleblowers to come forward and report corruption.
- Implement, as appropriate, best practices, educational programmes and initiatives aimed at creating clarity and defining the responsibility of executives, managers and staff in respect of self-regulation, prevention and detection of corruption.

2. A transparent, zero-tolerance approach must be adopted, and for those that are found to be involved in corruption, there must be legal and visible consequences.

A culture of impunity prevails in South Africa and is a source of great anger and frustration. It is true that the justice system (SAPS/Hawks/NPA) is failing to act in many cases where *prima facie* evidence of criminal behaviour is in the public domain, but the lack of impunity extends to companies that find corruption within their organisations.

Business needs to set an example and its actions should reinforce its stated positions. Business needs to be courageous, transparent and open in finding, addressing and tackling corruption and punishing those involved.

RECOMMENDATIONS

- All businesses must be encouraged to be transparent, which includes defining both commitments and disclosures as part of the organisations formal reporting structures.
- Businesses should ensure there are consequences. Where appropriate, businesses should launch independent investigations into suspected misconduct, and ensure that findings are decisively acted upon and shared publicly. Where there is evidence of criminal behaviour, however small it may appear to be, this should be brought to the attention of the relevant authorities, charges should be laid and prosecutions pursued. This includes pursuing personal criminal liability for directors where applicable.
- The business' sanctions against corruption need to be sufficiently punitive to act as a clear and effective deterrent.
- Where relevant, Businesses should reconsider performance and incentive structures and apply penalties and disqualification for direct or indirect involvement in corruption.
- A culture of accountability must be put in place - directors and business leaders need to take responsibility for corruption that occurs on their watch.
- Cease doing business with those entities and individuals that have been engaged in corrupt activities and that have failed to take necessary action.

3. Business should implement processes, controls and procedures to ensure compliance with anti-corruption legislation, including creating the conditions to enable whistleblowers to come forward.

Good governance processes, with the necessary controls, procedures, and training limit the opportunity for corruption. In addition, sectors such as the financial sector have legislated controls, which provide clear requirements to prevent money laundering and corruption.

While self-detection is vital and helpful there are many cases where corruption only comes to light through the actions of whistleblowers. While a number of companies already have whistleblowing hotlines, some employees may be reluctant to report, even anonymously, within their own environment.

RECOMMENDATIONS

- Review all procurement and supplier processes so as to ensure that they withstand scrutiny and are conducted in an open, transparent and legitimate manner.
- Implement or reinforce ethics and compliance instruments, programmes or measures designed to prevent and detect corruption. This is applicable to all directors, officers, and employees, as well as to all entities over which a company has effective control, including subsidiaries with a specific focus on the following areas: commissions, public sector contracts, contracts where the delivery of work is difficult to quantify

(e.g. professional services, consulting), anti-competitive behaviour, collusion, preferential or political contributions, gifts, hospitality, entertainment and expenses, customer travel, political contributions, charitable donations and sponsorships and facilitation payments.

- Companies should familiarise themselves with the provisions in the Protected Disclosures Amendment Act, which was signed into law on 31 July 2017.
- There should be active encouragement of whistleblowers to come forward. Organisations should, where feasible, explore anonymous whistleblowing hotlines. False and malicious whistleblowing, however, should be strongly condemned.

BUSA'S ROLE

BUSA should undertake the following actions:

- Build visibility and awareness through membership and public communication on the impact and imperative to curb corruption. This includes:
 - re-emphasising the important role of institutions such as the SAPS, the Hawks, the NPA, the Public Protector's office and the Courts in combating corruption.
 - using the media and public tools / speaker platforms to educate business on current legislation, responsibilities, tools and methods for curbing corruption, whistleblowing initiatives and as a vehicle for thought leadership.
 - speaking out against entities that are involved in corrupt activities, but also to recognise companies that are courageous, transparent and publicly accountable in finding, addressing, and tackling corruption and punishing those involved.
- Encourage research activities that strengthen detection and expose corruption.
- Add its weight to the efforts of BUSA members and peers in organised business to curb corruption and embrace a business culture of clean and ethical business practices.
- Identify and build awareness on standardised anti-corruption tools and compliance frameworks that can be accessed by businesses of different sizes and sectors to implement anti-corruption principles, policies and mechanisms. This could include establishing guidelines for businesses on whistleblowing.
- Explore partnerships that will lead to the establishment of mechanisms to facilitate and support whistleblowing and publicly recognise companies that are courageous, transparent and publicly accountable in finding, addressing and tackling corruption and punishing those involved.

RECOMMENDED WAY FORWARD FOR BUSA

1. Use this discussion document as the basis for its input on corruption and make public statements in respect of tackling corruption in the private sector.
2. Support mechanisms within Nedlac to build on the Summit theme of 'Restoring integrity by combating corruption through good governance'.
3. Identify and build awareness on management tools that can be accessed by businesses of all sizes and sectors on implementing anti-corruption principles, policies and mechanisms, including exploring the establishment of a national whistleblowing hotline in partnership with other likeminded organisations.