

SABPP FACT SHEET

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ETHICS, FRAUD AND CORRUPTION

Introduction

Unethical behaviour by people in all walks of life and in all types of employment cause financial and non-financial losses and damage to society through poor role-modelling and erosion of the sense of what is right and wrong.

Corruption and nepotism are perceived in South Africa today as being centred around politicians and public servants. However, corruption and fraud are endemic also in the private sector. Corruption always involves at least two parties. Fraud most often involves collusion between several people.

Corruption and fraud are examples of behaviour that is both illegal and unethical. Other types of behaviour are unethical but may not be illegal – such as a decision by a Board of Directors not to replace an air filter or water purification equipment, resulting in gradual low-level pollution of the environment.

PLEASE FORWARD THIS SHEET TO OTHER HR PROFESSIONALS AND STUDENTS!

“Justice, freedom and fairness for all form the foundation of a true democracy. The South African Constitution guarantees us personal rights, such as the freedom to trade, freedom of occupation and profession, and freedom of movement and residence. Crime and unethical behaviour affect these rights negatively and rob citizens of, amongst others, basic freedoms.”

Ethics Institute of South Africa

- Some 10 years ago, Business Against Crime reported to Parliament that:
54% of all stolen vehicles are re-registered through corrupt officials at the local licensing departments.
- The insurance industry pays out an estimated R3 billion annually in “fake dead” claims.
- According to an ISS study, an estimated 35 tons of gold is stolen from SA mines annually. This translates to US \$ 400 million.

The first of these examples illustrates interaction between organised crime and corrupt public servants. The second illustrates the wide-spread belief that insurance companies (and medical aid societies) are fair game for false or inflated claims. The third illustrates major organised crime within the workplace.

Other pertinent facts include:

- The cost of cyber-crime in South Africa was R3.7billion in 2012, according to Business Day Live
- Every second, 18 adults fell victim to cyber-crime (Norton)
- 84% of South African adults have experienced cyber-crime (The Star).

HR professionals are central to the creation and maintenance of workplaces that are free of crime and unethical behaviour and also to the development of more ethical values among leaders and employees at all levels, which can contribute to the spread of better behaviour beyond the workplace. Ethics has been integrated into the new National HR Competency Model as one of the foundational competencies for HR professionals.

DEFINITIONS

Ethics is defined in the dictionary as:

1. moral principles that govern a person’s behaviour or the conducting of an activity
2. the branch of knowledge that deals with moral principles.

FRAUD is defined in legal terms as “the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.” In more common language, the term “fraud” usually includes activities such as illegally transferring company money to your own or a friend’s bank account, pretending to have qualifications you do not have, pretending to have rendered a service that you have not rendered.

CORRUPTION - according to the Prevention and Combating of Corrupt Activities Act, corruption occurs when one party gives another party anything of value with the purpose of influencing them to abuse their power. A broader definition, used by Transparency International, is the abuse of entrusted power for personal gain. Bribery is usually regarded as a form of corruption.



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PRIVATE SECTOR CORRUPTION

Research conducted by Business Against Crime in 2006 looked at companies' actual experience of corruption and respondents' perceptions about corruption. One conclusion was that perception levels differ significantly from actual experience of corruption – people perceive that corruption is actually worse than it is. Some highlights from this research¹ are:

Companies' experience of corruption:

It seems that bribery is not the standard practice in South African business. Corruption in the private sector is most prevalent in the obtaining of business (competing for and awarding of quotes and tenders). The most common forms of gratification are monetary bribes, kickbacks and gifts. The cost in terms of lost business or lack of further investment due to corruption affects a minority of businesses. Companies get involved with corruption in order to get approvals to which they are not entitled and/or to bypass difficult / arduous regulatory requirements. Thus there is more corruption in business to public sector than business to business.

The most successful measures for preventing corruption include:

- Internal audit function (Success rating – 69.1)
- IT Controls (Success rating – 67.9)
- Strict contracting and procurement procedures (Success rating – 67.6)

Companies have the following preventive measures in place:

- Over 75% of companies report having the above three most successful measures in place.
- The majority of large enterprises have general governance functions in place, but 22.3% do not have an anti-corruption strategy / policy / response plan.
- Corruption is most often discovered by an employee
 - 48.9% of companies have some form of hotline in place.
 - 67.6% of large enterprises have some form of hotline in place.

Once corruption is discovered:

- 88.9% say they will always conduct an internal investigation
- 45.2% say they will permit the individual to resign
- 45.1% say they will always warn other industry players about the employee
- 38.4% say they will always report it to the SAPS / Scorpions¹
- 17.8% say they will NEVER report corruption to the SAPS/Scorpions due to:
 - Lack of confidence in the police – 75.7%
 - Lack of confidence in the justice system – 74.3%
- 79% are not aware of a legal requirement to report corruption to the SAPS.

¹ http://www.nacf.org.za/business/BAC_Corruption%20Report_KD_13Feb07_v1.pdf

¹ At the time, the Scorpions were still in existence. They have since been disbanded and replaced by the Hawks

¹ National Development Plan Executive Summary, page 47.

PUBLIC SECTOR CORRUPTION

The evidence gathered by the National Planning Commission demonstrated high-levels of corruption that continue to undermine the rule of law and hinder the state's ability to achieve development and socioeconomic transformation.

The National Development Plan proposes the following measures to improve the situation¹:

Competent, skilled institutions like the Public Protector and Special Investigating Unit need to be adequately funded and staffed and free from external interference. While thousands of cases are investigated, few get to court. Specialised teams of prosecutors and special courts should be established.

Government's procurement policies blur the line in matters of corruption, and the state procurement system has become overly bureaucratized. The emphasis on compliance by box-ticking makes the system costly, burdensome, ineffective and prone to fraud. We propose greater central oversight over large and long-term tenders, making it illegal for public servants to operate certain types of businesses and making individuals liable for losses in proven cases of corruption.

The country has barely begun to tackle societal factors that contribute to corruption. South Africa's history of state-sponsored patronage further blurs ethical standards. International experience shows that with political will and sustained application of the right strategies, corruption can be significantly reduced and public trust restored.

Recently, it was found that thousands of public servants, in addition to their full time jobs, also have their own private companies that conduct business with the state. A strong campaign has been launched to create legislation and regulations to curb this practice as it is seen to be inherently corrupt, besides being unethical, as these people should be devoting their full time attention to their jobs.

LEGISLATION AND CODES OF PRACTICE

There are several Acts addressing corruption specifically, including:

- Local Government: Municipal Finance Management Act [No. 56 of 2003]
- Protected Disclosures Act [No. 26 of 2000] (also known as the Whistle Blowers Act)
- Promotion of Administrative Justice Act [No. 3 of 2000]
- Promotion of Access to Information Act [No. 2 of 2000]
- Prevention & Combating of Corrupt Activities Act [No. 12 of 2004]
- Public Finance Management Act [No. 1 of 1999]
- Public Service Act - Proclamation 103 [Published in Government Gazette 15791 of 3 June 1994]
- These are all available from the website: www.info.gov.za/documents/acts.

The national Anti-Corruption Forum (NACF) has a comprehensive website dealing with these pieces of legislation and has two detailed guides which set out in simple terms, with cartoon illustrations, the provisions of the Protected Disclosures Acts and the Prevention and Combating of Corrupt Activities Act.

In addition, South African companies that do business with UK companies are barred from bribery by the UK Bribery Acts. Likewise, in the USA, the Foreign Corrupt Practices Act fulfills a similar role to combat cross-border corruption.

Ethics is a topic extensively dealt with in the King III report published in 2009 and the redrafted Companies Act of 2008 which came into effect in 2011. The Report established a clear link between sound governance and the creation and maintenance of more ethical organisations. The importance of ethics at board, management and staff levels is emphasised and, in particular, the need for an ethical culture. Organisations are required to set up a Social and Ethics Committee to oversee these aspects of organisational impact.¹

INSTITUTIONS

In recent years and in response to increasing levels of fraud and corruption in South Africa, various institutions and resources have been developed to help organisations combat these scourges.

1. BUSINESS AGAINST CRIME

www.bac.org.za



BACSA is a non-profit Company, with a Section 18A status (i.e. donor funds are tax deductible by the donor organization). It is governed by a Board of Directors comprising business leaders representing industry and commerce, including members, executives and office bearers of Business Unity South Africa (BUSA) and Business Leadership South Africa (BLSA).

The organization was established by business in 1996 in response to a request from then President Nelson Mandela who invited business to join hands with Government in the fight against crime. It is a special purpose vehicle, with the sole mandate to engage and give support to Government on crime-related matters.

BACSA has two distinct roles. The first is to get business' 'own house in order' by eliminating crime-enabling processes, systems and approaches, and improving crime prevention measures within the control of business. The second is to partner with Government, when invited, by sharing expertise, information, processes and technologies resident in business.

These roles are fulfilled primarily by mobilising business skills and resources in Government-defined areas of need, and the strategic alignment and coordination of business' anti-crime strategies and priorities.

BACSA is totally reliant on the commitment and generosity of companies who provide financial and other support. Since its inception, BACSA has supported Governments' anti-crime efforts in a wide variety of areas across the Criminal Justice System as well as the business sector.²

One of BACSA's projects has been working with the Department of Justice to establish specialised Commercial Crimes courts. These have been successful in developing the expertise to prosecute complex commercial crimes.

¹ SABPP Publication: King III Report. HR - The Way Forward. 2009.

² www.bac.org.za

2. NATIONAL ANTI-CORRUPTION FORUM

www.nacf.org.za.



Ethics in the public sector are overseen by the Public Service Commission (PSC). The NACF was set up early in the 2000's as a multi-stakeholder body to assist the PSC in combating corruption and to conduct anti-corruption campaigns. The business sector is represented on the NACF through Business Against Crime, which represents Business Unity South Africa on the Forum.

The NACF supports the annual International Anti-Corruption Day, marked in December each year.

The Public Service Commission operates the National Anti-Corruption Hotline 0800 701 701 and a toolkit explaining the operation of this line can be downloaded from www.psc.gov.za/documents/docs/.../P-3102%20lowres%20PSC%20ver8.pdf.

3. THE ETHICS INSTITUTE OF SOUTH AFRICA

www.ethicsa.org



The Ethics Institute of South Africa (EthicsSA) is a non-profit, public benefit organisation. It was incorporated in September 1999 and commenced operations in August 2000. It is a membership based organisation and also offers services to organisations in the public and private sectors, as well as to professional associations and their members. Services include training, guides and booklets, an annual Ethics Conference, a library and on-line research reports and toolkits such as Preventing White-Collar Crime. The Institute also trains and certifies Ethics Officers.

4. ETHICS MONITORING & MANAGEMENT SERVICES

www.ethicsmonitor.co.za

EthicsMonitor

Ethics Monitoring & Management Services (Pty) Ltd was started by Cynthia Schoeman in 2010 to promote the proactive management of workplace ethics and to provide practical support to organizations to improve and more effectively manage their ethics. Its services and products are based on more than 12 years of research, development, lectures and workshops in the field of workplace ethics. Notable among its services is the Ethics Monitor, a web-based ethics survey which identifies and prioritizes critical issues and necessary actions to improve an organization's ethical status.



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5. CORRUPTION WATCH

www.corruptionwatch.org.za



Corruption Watch³ is a non-profit organisation launched in January 2012.⁴ We rely on the public to report corruption to us. We use the reports as an important source of information to fight corruption and hold leaders accountable for their actions.

Communication

Corruption Watch provides a platform for reporting corruption. Anyone can safely share what they experience and observe and can speak out against corruption. Our communication platform includes our website, an SMS line, social media, email or post.

Investigation

We investigate selected reports of alleged acts of corruption, choosing cases that have the most serious impact on our society. For instance, we may investigate a case involving basic health or education services because of its impact on the most disadvantaged South Africans. We hand over our findings to the authorities to take further action, and we monitor the progress of each case. We work with mainstream and community media to make sure that corruption is fully exposed.

Research

We gather and analyse information to identify patterns and hot spots of corruption. We prepare research reports on these hot spots in order to expose and find solutions to systemic corruption. Using our own communication platforms and the media, we share our findings with the public, with like-minded non-governmental organisations and with public sector bodies undermined by corruption.

Mobilisation

We build campaigns that mobilise people to take a stand against corruption. Our campaigns involve the public, community groups and other organisations such as trade unions.

Corruption Watch also has a Pledge, that individuals can sign up to on the website:

Corruption affects us all. It weakens our democracy and trust in our leaders; it eats away at our ethics and corrodes our moral fibre; it discourages public and private investment and reduces its efficiency thus slowing growth and development.

But the people who suffer the consequences of corruption most grievously are those who depend upon public resources for their wellbeing. To be dependent on the government for housing, health care, education, security and welfare makes the poor most vulnerable to corruption, which can deprive them of their constitutional rights.

"A nation's greatness is measured by how it treats its weakest members." Mahatma Gandhi

³ www.corruptionwatch.org.za

⁴ COSATU was instrumental in setting up Corruption Watch, but it operates as a separate institution.

THEREFORE

I pledge to be a responsible and honest citizen and

- neither pay nor take bribes;
- obey the law and encourage others around me obey the law and to treat public resources respectfully;
- neither abuse any public money entrusted to my care, nor any position I hold as a public servant, and
- act with integrity in all my dealings with government; and
- always remember that public resources are intended for the benefit of the public, not for private gain

Every Friday, Corruption Watch acknowledges “heroes” – people who have exposed corruption and unethical practices. Likewise, they announce “zeroes” – people or organisations involved in corrupt practices.

In addition, the **Institute of Directors (IOD)** has taken the lead in promoting good corporate governance through the King Reports.

ETHICS FOR HR PROFESSIONALS

HR Professionals who register with the SABPP at any level are required to commit to and observe the SABPP’s Code of Conduct. The Board’s Ethics Committee deals with complaints against registered professionals⁵.

The SABPP has various resources to assist HR professionals in understanding and applying ethics in the workplace including:

- A Board Position Paper on Driving Ethics in the HR profession,
- A Guide to Ethics in HR Management



And

- An email address for HR professionals to interact with advisers on ethical issues. **ethics@sabpp.co.za**

POLICIES TO SUPPORT WORKPLACE ETHICS

Ethics in the workplace requires the development and implementation of several policies. It is helpful, as a basis, to clearly set out the values that the organisation believes are fundamental to organisational success. The chosen set of values should then be explained by the use of examples of behaviours that fit the values and those that do not. Good practice is to include the statement of values into employees’ contracts of employment and to infuse the measurement of behaviour that supports the values into the performance management system.

The organisation and its leadership must lead with integrity. Business Unity South Africa (BUSA) has a South African Charter of Ethical Business Practice that it is recommended each business organisation adopts.

⁵<http://www.sabpp.co.za/professional-code-of-ethics/the-sabpp-code-of-ethics/>

CHARTER OF ETHICAL BUSINESS PRACTICES

As businesses, we earn our 'licence to operate' in society by being good corporate citizens, responsibly discharging our obligations and claiming our rights. In order to promote ethical business practices, BUSA commits to the following aspirational standards:

Responsibility

Responsibility requires **taking ownership** of, and **being accountable** for, our acts and omissions. It means that we take care of what is entrusted to us, recognising the economic, social and natural environments in which we operate.

Because we value Responsibility, we commit to:

- Exercising our obligations with due care, diligence and the required skill.
- Practising good governance in our business strategies and operations.
- Upholding all applicable laws, rules, and standards.
- Pursuing business practices that are economically, socially, and environmentally sustainable.
- Being prudent in our use of natural resources.
- Supporting growth and development in South Africa, by, amongst others, paying our due taxes.

Integrity

Integrity requires **doing what we say**, and always acting in good faith. This builds trust, which is necessary for business to thrive.

Because we value Integrity, we commit to:

- Being truthful and honest in all our dealings, disclosures and reporting.
- Honouring our commitments and delivering on our promises.
- Refraining from activities that are corrupt or can be seen as promoting corruption in society.
- Being transparent when funding political activities.

Respect

Respect requires **acknowledging others' rights and inherent human dignity**.

Because we value Respect, we commit to:

- Treating customers, staff and all other stakeholders with dignity.
- Upholding basic human rights, including those set out in the South African Constitution.
- Duly considering the interests of people, communities and the environment where decisions could affect them.
- Refraining from arbitrary or unjustified discrimination against anyone.
- Ensuring a safe and healthy work environment.
- Recognising the interests and capabilities of those to whom we market our products or services.

Fairness

Fairness requires even-handedly **balancing the interests** of various parties, ensuring that everyone gets what is rightfully due to them.

Because we value Fairness, we commit to:

- Supporting free and fair competition by not being involved in price-fixing or other anticompetitive activities.
- Upholding just labour practices.
- Providing reasonable remuneration to employees.
- Negotiating in good faith, and refraining from coercion.
- Supporting freedom of association and collective bargaining.
- Being sensitive to social inequality in our business practices.

Flowing from the organisational statement of values, the NACF has an Integrity Pledge that it recommends all organisations ask their employees to commit to.

INTEGRITY PLEDGE TO THE PEOPLE OF SOUTH AFRICA

As a committed South African, I will strive to serve my country and its people with respect, dignity and integrity, and consistent with the values and principles of the Constitution.

I commit myself to set an example through ethical conduct for the furtherance of integrity and good governance and to report all corruption and other forms of unethical practice that I am aware of.

I will not accept or offer any advantage, gifts or benefits that might be seen to prejudice my position or lead to conflicts of interest.

I am prepared to explain honestly and be accountable for my actions when dealing with all spheres of society. Therefore, my actions will be transparent.

I will strive for high standards of service and ethical behaviour that are conducive to the development of the economy and the eradication of poverty.

I will promote these values in those around me.

Through the above actions I hope to promote the welfare of all our people.

This is my pledge to the people of South Africa.

Then, a clear **Disciplinary Code** must be established, detailing the various types of behaviour that this particular organisation considers to be misconduct. It is important to adapt general disciplinary codes to the particular business or nature of the organisation, as some types of misconduct are considerably more serious in some types of organisation than others. One pertinent example here is absence from the workplace – for an insurance office that might be irritating but not serious and a first offence is therefore considered minor, whilst for a primary school, the absence without notice of a teacher can threaten the education of the learners and could therefore be considered as serious even as a first offence.

A clear Grievance Procedure is also required to set out how employees' problems or perceived problems will be handled. The more grievances are perceived to be handled fairly, the better employment relations will be, and also the more that the organisation's leadership will be able to ask for high standards of behaviour from employees.

Whistle-blowing refers to the actions of an employee in drawing management's attention to acts of wrongdoing or unethical behaviour by other employees. In some cases, this could be done through filing a grievance, where the complainant feels personally disadvantaged by the wrong-doing. For other cases, it is a good idea to have a whistle blowing policy in place. Such a policy would set out clearly the channels by which disclosures can be made and the measures to be taken by the organisation to ensure no victimisation of the whistle-blower. Many organisations have put in place Whistle-Blowing hotlines, operated by specialist contractors. Such contractors can also advise on the development of the policy.

CONCLUSION

The professional handling of ethics, fraud and corruption is an important function for any HR professional. A good knowledge of the legislation and resources available is necessary. This Fact Sheet has provided the basis for acquiring such knowledge. As experts on employee and organisation behaviour, HR professionals should play a key role in working with management to create and sustain an ethical organisation culture. This needs to be reinforced by ethics policies, practices and guidelines to prevent fraud and corruption. A high level of HR competence, assertiveness and perseverance is needed to drive ethics in the workplace and in society at large.

COMPILED AT THE SA BOARD OF PEOPLE PRACTICES BY:

- **MARIUS MEYER – CEO**
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