



RAG Strategists Advisory Note 2

“Shaping and sharing best practice in infrastructure anti-corruption”

PRECCA – Scope of Section 34A in PRECCA 2004

"Trust is like the air we breathe - when it's present, nobody really notices; when it's absent, everybody notices." - Warren Buffett.

The recent addition of Section 34A to the PRECCA Act 2004 imposes strict liability on a commercial organisation for failing to prevent the giving or even the promise of gratification for its benefit. If an individual associated with the organisation is found to have corruptly provided, agreed to provide, offered, or promised a gratification for the organisation's advantage, the provision automatically assumes corporate liability for the organisation and its appointed directors. The only defence available to the organisation and its board is to demonstrate that they had in place “adequate procedures” to prevent, detect, and prohibit such conduct.

The commercial organisation may also be held liable for the actions of its subsidiaries or controlled entities, as well as its associates. In terms of individuals, Section 34A extends liability to the actions of anyone associated with the organisation. This includes not only employees, but also directors, partners, or others providing services on behalf of the organisation. The term “services” is broadly defined in Section 34A, with the court instructed to consider all relevant circumstances, rather than simply the nature of the relationship.

Persons associated with the commercial organisation can include business partners such as contractors, suppliers, agents, intermediaries, and co-investors in joint ventures, as well as entities involved in joint ventures or special purpose vehicles, regardless of the degree of operational control the organisation exercises over them.

In establishing “adequate procedures”, the commercial organisation must evaluate all relationships that contribute to its operations and must ensure compliance with their implemented Anti-Corruption Management System (ACMS).

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