



RAG Strategists Advisory Note 4

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

“Adequate Procedures” Section 34A in PRECCA 2004

The purpose of the PRECCA 34A provision is to promote the development of a business environment free from corruption and to encourage all commercial organisations to adopt reasonable and proportionate measures to prevent their involvement in corrupt activities for personal gain. These measures should include policies and procedures, supported by training, communication, and enforcement to ensure their effectiveness.

If a commercial organisation is found liable under Section 34A of the PRECCA, the provision allows the organisation to use the presence of adequate procedures as a defence against corporate liability. In this case, the organisation must demonstrate that it had the necessary procedures in place to prevent its employees and/or associated persons from engaging in corrupt practices related to its business activities.

The Minister is required to issue guidelines on adequate procedures related to the provision of Section 34A. However, this is unlikely to happen and it has been stated that South African organisations that follow the UK Bribery Act (2010) issued guidelines, and in particular the guidelines relating to Section 7 of such act, would then constitute acceptable adequate procedures. These UK guidelines are not meant to be prescriptive, and it should not be assumed that a "one-size-fits-all" approach applies. They should be implemented practically, in proportion to the organisation's scale, nature, industry, risk, and complexity.

If a corrupt incident occurs, it will be up to the courts to determine whether the commercial organisation had implemented the necessary safeguards that should have prevented the offence. In making their decision, the judiciary is likely to consider the specific facts and circumstances of the case, including the presence of the organisation's policies and procedures and how effectively they were implemented. However, by adopting these adequate procedures, companies can be confident that they have established a valid defence, helping to protect both the organisation and senior management from liabilities arising under the 34A provision in PRECCA.

Advisory Note 4 prepared by RAG Strategists (Pty) Ltd

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Contact: Anton Krause

Mobile: 082 4470808

E-mail: anton@ragstrategists.co.za
www.ragstrategists.co.za

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