RAG Strategists Advisory Note 5

"Shaping and sharing best practice in infrastructure anti-corruption"

"Failure To Prevent Corruption" Offence / Section 34A in PRECCA (2004)

To avoid the offence of failing to prevent corruption, commercial organisations must show that they have "adequate procedures" in place to address corruption risks. The level of these procedures depends on the organisation's size, nature, and specific risks. Smaller businesses with low corruption risks will require less extensive measures than larger businesses or those in high-risk environments. The South African legal profession has pointed to the UK Bribery Act (2010) guidance, which provides for six principles that organisations can follow to mitigate corruption risks:

1. Proportionality: Measures should be proportional to the business's size and risk level.
2. Top-Level Commitment: Leadership plays a crucial role in preventing corruption. Business leaders should actively promote anti-corruption practices and ensure that all staff and stakeholders understand and adhere to their anti-corruption policy.
3. Risk Assessment: Organisations must assess their corruption risks, particularly when entering new markets or business arrangements. This helps identify areas with higher exposure to corruption.
4. Due Diligence: Organisations should carefully vet their partners, ensuring they do not engage with individuals or businesses that may be involved in unethical practices or corruption.
5. Communication: Clear communication of anti-corruption policies to staff and external partners is essential. Ongoing training and awareness campaigns can reinforce the commitment to ethical business practices.
6. Monitoring and Review: The effectiveness of anti-corruption measures should be regularly reviewed and updated to address changing risks. For example, new markets may introduce additional corruption risks, requiring adjustments to procedures.

By following these principles, commercial organisations can take appropriate action to prevent corruption based on their specific risk environment and business context.

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