



THE PREVENTION and Combating of Corrupt Activities in South Africa Act No 12 of 2004 was signed into law on April 27, 2004 and the definition of corruption under the act is very wide.

The critical word used in respect of corruption is "gratification". It is widely interpreted to include money in cash or otherwise, but also donations, gifts, loans or fees, forfeiture of penalties, granting of any contract or service, the release or discharge of a loan, discounts, rebates and commission.

Any party who accepts any gratification from another person or gives to any other person gratification so as to influence another person to act in a manner that amounts to illegal, dishonest, incomplete or

Definition of 'corruption' very wide

biased behaviour and where it amounts to the abuse of a position of authority or breach of trust, or the violation of a legal duty or set of rules, is guilty of corruption.

Companies that give generous gifts to clients can be guilty of corruption. Much depends on the circumstances and whether the gifts gave rise to any bias or dishonest act.

The act also targets members of a legislative authority, judicial officers, prosecutors and other public officials. It also deals with contracts and tenders. Tender corruption in South Africa is a huge problem with several government contracts being



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the subject of investigation.

The act also provides that a register of tender defaulters is to be established with the National Treasury. Any person or company listed on that register may not do any business with a government department while listed in the register. Very few transgressors have been recorded

on that register to date.

Ominously, there is also a provision in the act which requires that where a person in a position of authority knows that an offence of theft, fraud, extortion, forgery or of fering of forged documents involving a sum of R100 000 or more has been perpetrated, this has to be reported through a specific police reporting mechanism. Failure to do so can lead to 10 years' imprisonment.

Persons in authority include a partner, chief executive of any commission, council etc, a manager, secretary or director of a company and a director-general of any national or

provincial department. Perpetrators can be sentenced to life imprisonment, and courts have the power to impose fines equal to five times the value of gratification given.

Corruption is notoriously difficult to prove and in most cases it is necessary to carry out undercover operations to obtain sufficient evidence. All businesses need to be aware of the provisions of the act as the consequences of non-compliance can be extremely harsh.

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