

Prevention and Combating of Corrupt Activities Act 12 of 2004 (PCCAA)

Topic: Security and Corruption

IN A CALABASH

Introduction

The PCCAA aims to prevent and fight corruption in government and in the private sector.

Objectives of the Act

The objectives of the Act are to:

- strengthen measures to prevent and combat corruption and corrupt activities;
 - criminalise corruption and corrupt activities;
 - deal with investigations into corruption;
 - create a register to prevent people who use corruption from getting government contracts or tenders;
 - require people in positions of authority to report corrupt transactions over R100 000; and
 - prevent people in South Africa from using corruption to influence members of the public sector of other countries.
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Application of the Act and its implication to Tourism

The PCCAA applies to all persons in South Africa, including–

- employers and employees;
- anyone working for the government (such as Ministers, department staff, and the police); and
- people outside of the government (such as someone working for a business).

The Act provides the following examples of persons in positions of authority:

- The Director-General, Head or equivalent officer of a national or provincial department;
- The Municipal Manager of a municipality;
- A person in the Senior Management Service of a public body;
- The Head, Rector or Principal of a tertiary education institution;
- The Manager, Secretary or Director of a company or closed corporation;

- The Executive Manager of a bank or financial institution;
- A Partner in a partnership;
- The Chief Executive Officer (or person holding a similar position) of any structure, institution or body set up by law;
- A person employed by a business who is responsible for the overall management and control of the business; and/or
- Anyone on the above list who has been appointed in an acting or temporary capacity.

Any person who operates, manages or owns a business falling within the tourism industry must not bribe any person in authority in exchange for that person agreeing to do or not to do anything, such as turning a blind eye to an area of non-compliance or awarding a license or authorisation in exchange for such bribe.

Summary of the provisions of the Act

In terms of the PCCAA, a person or body is guilty of the offence of corruption when there is an offer or acceptance of a gratification for the 'unauthorised or improper inducement to do or not to do anything'.

Apart from this general offence of corruption, the PCCAA goes further and sets out offences of corruption relating to specific persons, including–

- public officers;
- foreign officials;
- agents;
- legislative authorities (members of parliament, provincial government or local municipality);
- judicial officers;
- prosecuting authorities; and
- any member of the public who deals in a corrupt manner with such people.

The PCCAA also sets out further offences of corruption relating to witnesses and evidential material during certain proceedings, contracts, procuring and withdrawal of tenders, auctions, sporting events and gambling games.

Duty to report

The PCCAA places a duty on individuals who hold positions of authority, as listed above, to report corrupt activities to any police official.

This duty arises when the relevant individual knows or should reasonably have known or suspects that a person has committed an offence of corruption involving R100 000 or more.

Failure to report this act of corruption is a criminal offence and carries a penalty of the imposition of a fine or imprisonment of up to 10 years.

It should be noted that any person who has been appointed to the aforementioned positions in acting or temporary capacities are also regarded as persons who hold positions of authority.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Non-compliance with the PCCAA can give rise to a number of consequences, including fines and/or imprisonment for a period which could be a maximum of life.

In addition to any fine a court may impose, the court may impose a fine equal to five times the value of the gratification involved in the offence.

Register of tender defaulters

Once a person or company is convicted of crimes involving contracts or tenders, the name of the individual or company director is placed onto a national Register of Tender Defaulters. The name can remain on the Register for between five and ten years, during which time the individual or company named will not be entitled to any new contracts or tenders.

If the person so convicted is an enterprise, the court may also issue an order that–

- the particulars of that enterprise;
- the particulars of any partner, manager, director or other person, who wholly or partly exercises or may exercise control over that enterprise and who was involved in the offence concerned or who knows or ought reasonably to have known or suspected that the enterprise committed the offence concerned; and
- the conviction, sentence and any other order of the court consequent thereupon,

be endorsed on the Register.

The court may also issue an order in respect of any other enterprise owned or controlled by the person so convicted or the particulars of any partner, manager, director or other person who wholly or partly exercises or may exercise control over such other enterprise, and which enterprise, partner, manager, director or other person was involved in the offence concerned, or partner, manager, director or other person knew or ought reasonably to have known or suspected that such other enterprise was involved in the offence concerned.

Whenever the Register is endorsed, the endorsement applies unless the court directs otherwise, to every enterprise to be established in the future, and which enterprise will be wholly or partly controlled or owned by the person or enterprise so convicted or endorsed. The Registrar must, in respect of every such enterprise, endorse the Register accordingly.

The registrar or clerk of such court must forward the court order to the Registrar and the Registrar must endorse the Register accordingly.

Termination of agreements

Where the Register has been endorsed, the National Treasury may, in addition to any other legal action, terminate any agreement with the

person or enterprise referred to above, provided that in considering the termination of an agreement, the National Treasury must take into account the following factors–

- the extent and duration of the agreement concerned;
- whether it is likely to conclude a similar agreement with another person or enterprise within a specific time frame;
- the extent to which the agreement has been executed;
- the urgency of the services to be delivered or supplied in terms of the agreement;
- whether extreme costs will follow such termination;
- any other factor which, in the opinion of the National Treasury, may impact on the termination of the agreement; and
- if that agreement involves any purchasing authority or government department, such restriction may only be imposed after consultation with the purchasing authority or government department concerned.

The National Treasury must determine the period (which period may not be less than five years or more than ten years) for which the particulars of the convicted person or the enterprise referred to above remain in the Register. During such period, no offer in respect of any agreement from a person or enterprise referred to in the register may be considered by the National Treasury or the purchasing authority, any government department must ignore any offer tendered by such person or enterprise or disqualify such person or enterprise from making any offer or obtaining any agreement relating to the procurement of a specific supply or service.

Where the National Treasury has terminated an agreement, it may, in addition to any other legal remedy, recover from such person or enterprise any damages incurred or sustained by the State, either as a result of the tender process, the conclusion of the agreement or which the State may suffer by having to make less favourable arrangements thereafter.

The National Treasury may at any time vary or rescind any restriction imposed and must, when the period determined expires, remove the particulars of the person or enterprise concerned from the Register. When the National Treasury imposes a restriction, or amends or rescinds such a restriction, it must notify in writing within 14 days–

- the person whose particulars have been so endorsed;
- any purchasing authority on which it may decide; and
- all government departments,

of any resolution or decision relative to such restriction or the amendment or rescinding thereof, and request such authorities and departments to take similar steps.

Disclosure

Any person whose particulars, conviction and sentence have been endorsed on the Register and who has been notified must, in any subsequent agreement or tender process involving the State, disclose such endorsement, conviction and sentence.

Any person who fails to comply is guilty of an offence.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

The following measures must be in place in order to demonstrate compliance with this Act:

- Awareness of and training on the Act;
- Ethics Code of Practice and Procedures; and
- Whistle-blowing Policy.

FURTHER INFORMATION

Regulators

South African Police Service
Department of Justice

Websites

www.saps.gov.za
www.justice.gov.za