


The costly fight against **FRAUD**



AMANDA MATTHEE asks about the nuisance value of SA's new anti-corruption laws to the honest businessperson.

Someone once said that systems are the scar tissue of things that have gone wrong in the past.

Such systems include the new laws and regulations promulgated to help combat fraud. On the one hand, they protect. On the other, they bog down decent business people with cumbersome compliance regulations. This, in turn, leads to more rules and regulations, lengthier processes and more check points. And it increases the cost of trade and insurance.

Reputable companies have always had their own internal rules, because it was the right thing to do. Now they also have a legal obligation to comply with industry regulations.

To adhere to all the new laws and to

keep regulators happy, large companies are now establishing separate compliance departments to deal with complex regulatory requirements, business practices and internal mandates.

"Some companies only comply up to the level required by the regulator in order to save money – because a compliance department is an expensive resource. However, non-compliance can lead to hefty penalties, and the directors are held accountable," says André Groenewald, forensic partner in control of Fraud Risk Management at KPMG.

Laws such as FAIS, the NCA and the new Companies Act can easily entangle companies in a web of compliance rules. "To add to the confusion, businesses often tackle the different pieces of legislation in isolation. There is merit in converging the overlap of the same requirements found in different pieces of legislation. Businesses should also adopt the compliance standard for the product or service requiring the highest level of compliance throughout the organisation. It may greatly reduce costs and administration," says Rian Geldenhuys, director of Floor Inc Attorneys and lecturer in Management Law at the USB.

Are these laws a nuisance? Yes, of course. Adhering to all the requirements is time-consuming and costly. But there are also benefits to be realised, especially when this can help to protect the value of your reputation. □

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DOES YOUR COMPANY COMPLY WITH THESE ACTS?

According to KPMG's Fraud Risk Management Department, these are some of the laws and regulations with which companies must comply:

- > **The Financial Advisory and Intermediary Services Act (FAIS):** Forces financial institutions to provide trusted advice.
- > **The Prevention of Organised Crime Act (POCA):** Deals with money laundering.
- > **The Financial Intelligence Centre Act (FICA):** To support POCA, the Financial Intelligence Centre Act (FICA) was promulgated to enhance the regulation by requiring financial institutions to, among others, verify client details.
- > **The National Credit Act (NCA):** Promotes non-discriminatory access to credit and reduces reckless credit behaviour.
- > **JSE Securities Exchange Listing Requirements:** Requires of companies to, among others, comply with King II in their annual statements.
- > **King II Report:** Improves governance and accountability by outlining the common law duties of directors.
- > **Public Finance Management Act:** Regulates financial management in the national and provincial government.
- > **Municipal Finance Management Act:** Ensures sound financial management in municipalities.
- > **Security Services Act:** Regulates and controls exchanges and securities trading.
- > **Basel II:** Improves supervision of banks and reduces the chances of banking failures.
- > **Companies Act:** Enforces financial reporting standards and promotes the independence of auditors.
- > **Protected Disclosure Act:** Enables employees safely to disclose information regarding unlawful or irregular conduct by employers or other employees.
- > **Foreign Corrupt Practices Act (FCPA):** Prohibits corrupt payments to foreign officials and requires companies whose securities are listed in the USA to meet its accounting provisions.
- > **The Prevention and Combating of Corrupt Activities Act:** Turns corruption into a crime.
- > **Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA):** Combats terrorist activities. It also stipulates that a person who suspects another person of terrorist activities must report that knowledge to the police.