

Role of the Legal Profession in Combating Corruption.

Law Society of South Africa: Annual General Meeting.

23 March 2022.



Countries can be systemically corrupt.

- A country's political, business, market and societal culture determine whether individuals, professionals and companies may be tempted to engage in corruption;
- If governing party is corrupt – likely that may translate into political, business, market and society corruption;
- In countries that are systemically corruption, individuals, public and private companies will be more inclined to behave corruptly;
- Companies may fear that if they do not pay bribes, they lose their competitive advantage, and will not get contracts.
- The so-called “prisoner’s dilemma” - the company that does not do bribery, will lose out on contracts if every other companies bribes in return for contracts;
- Crucial that in countries that are systemically corrupt, private companies come together to make collective agreements not to act corruptly – and for companies to stick to such agreements.



Corruption of South Africa's legal value chain.

- Almost entire value legal value chain is systemically corrupt;
- Police, investigations, crime intelligence, public prosecutions - systemically corrupt;
- “Capture” - cadre deployment – “political patronage appointments, incompetence, policy capture;
- “Capture” of “transformation” debates – for self-interest, in some legal circles;
- “Capture” of lower court systems – magistrate courts;
- Criminal justice procurement systems captured;
- Attempts at capture of the Judicial Services Commission appointment process;
- Some legal professionals in “prisoner’s dilemma” – if not participate in corruption, will lose out on contracts if every other companies bribes in return for contracts.

Rise in corruption by trusted professionals.

- Rise in corruption by trusted professionals - auditors, medical doctors and legal profession;
- South Africa's integrity ecosystem, the overarching societal frameworks of laws, values and institutions established to combat corruption, ensure probity and accountability has collapsed;
- Society generally view auditors, medical professionals and the legal profession, with higher regard, because they hold positions which exercises a public trust.





Capture of professions.

- Reason why professions has entry examinations;
- Auditors, lawyers, medical doctors;
- Professional associations and formal standards of conduct is to set basic principles of good behaviour;
- Failure by oversight bodies of professions' to hold corrupt "trusted" professionals accountable;
- Society therefore views of ethical failures, corruption and indifference by these respected professions with more alarm.

Corruption of regulatory authorities.

- Corruption of regulatory authorities have contributed to the spread of corruption in the professions;
- Supposedly independent regulatory authorities have been staffed by corrupt, incompetent and uncaring ANC cadre deployees;
- Poor independent oversight over professions and professional firms;
- In many cases, the business cultures of many professional service companies – law firms, auditing firms and medical companies - also mirror the corrupt culture of the ANC and the state – with whom they are doing business with;



Corruption of professional firms.

- Many professional firms, whether law, auditing or medical, argue, while government and everyone else behave in this way – corruptly, we better do the same; or face losing out on lucrative government contracts;
- Professional associations, for the legal professions, auditors and medical professions have spectacularly failed to uphold ethical, professional and behavior standards of their members;
- Many of these professions are self-regulated;
- However, in many cases self-regulation has failed spectacularly;
- Given the very corrupt state of government, regulation by government of professions are unlikely to be better.

How professional associations can tackle corruption.

- Professional associations set basic principles of behaviour for their members;
- They generally have ethics codes, which provide a set of standard for conduct for members of the profession that issues the code;
- Given the systemic nature of corruption, professional associations must play a bigger role in holding their individual members and firms, accountable for corrupt behaviour;
- They must also play a stronger role in ensuring the corporate cultures of professional firms are more ethical, the clients they take on more balanced and caring;
- There has to be a change in professional firms' focus on profits at all costs, towards more balanced, ethical and sustainable profit targets.

