

CORPORATE GOVERNANCE AND ILLICIT CONDUCT

**GUIDANCE FOR BOARDS, MANAGEMENT, COMPANY SECRETARIES
AND COMBINED ASSURANCE PROVIDERS**

PETER GOSS

The Problem

Illicit conduct

- Behaviour lacking in personal & business integrity
- Absence of courageousness, robust debate
- Limited in-depth scrutiny, professional scepticism
- Succumbing to group pressure & amoral conduct

The Problem

Illicit conduct (REFER Page viii & ix)

- At worst - dearth in due diligence, care and skill
 - ✧ Absence of independence/objectivity
 - ✧ Related parties
 - ✧ Conflicts of interest

Bidding buddies – The 2010 World Cup soccer stadiums

- Construction cartels agreed on illicit collusive bidding arrangements - 2010 Soccer World Cup
- Competition Commission reached settlement with certain affected companies - R1.4 billion fine
- **QUESTIONS???**: Ethical Leadership? Responsibility? Accountability? Fairness? Transparency?
- Corporate citizenship?

Bidding buddies – The 2010 World Cup soccer stadiums

- General public (customers, society at large) still don't have a sense of the truth - Why such fines paid? Who did what wrong? THEY STEAL/MAYBE I SHOULD!!!
- Appropriateness of R1.4 billion fine vs +/-R50 billion for stadiums?
- Stakeholder interest & Sustainable Value Creation?

SOLUTIONS

I.R.T: Remuneration, reward, compensation and related financial or other recognition of executives

- **Solution: Rigorous probity into the underlying evidence of performance and comparison thereof to company performance**

SOLUTIONS

I.R.T: CEOs of non-performing companies paid excessive remuneration, share incentive schemes

- **Solution – Revisit performance contracting with executives, CEOs**

SOLUTIONS

IRT: Financial bail-outs, inter-company loans, contract variations and capital project variation funding approved by board on basis of executive summary reports

- **Solution:** Studying full details of original due diligence reports, business cases, business plans, project & contract management documents

SOLUTIONS

I.R.T: Shallow reasons presented by management or board sponsors accounting for business failures or other financial challenges where further funding or condoning is sought

- **Solution:** Ensure full, complete information & evidence for board to make a defensible decision when challenged

SOLUTIONS

Ctd: I.R.T. Reasons presented by management or board sponsors accounting for business failures or other financial challenges where further funding or condoning is sought

- **Solution:** With these decisions, the implementation of corrective measures must be taken to wind down problematic ventures and limit future related risks

SOLUTIONS

I.R.T.: Structure, order and discipline

- Knee jerk, reactive approaches reaction

Solution:

- Corporate intelligence
- Crisis management
- Governance forensics interventions
- A strategic role for the business sector

THANK YOU!!!