

The objective of due diligence is to entrench value

By [Lerato Thekiso](#)

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Revelations of corruption and ongoing investigations into scandalous misappropriation of assets continues to make headlines every week. While these investigations must be pursued to the fullest extent of the law (and hopefully, without interference), the economy continues to be assaulted - contracting by 3.2% for the first three months of 2019 - and facing further downgrades from international ratings agencies.



Image source: Getty/Gallo

What's perhaps more disheartening is that corruption goes on, despite having advanced and well-established regulations, legislations and a responsible governance framework as safeguards. For instance, both the Companies Act and King IV lend themselves to subscribe to due diligence practices.

While the scope of the due diligence, and the mechanisms of investigation, may differ when undertaken on a person versus an entity, when applied correctly, it refers to the care a reasonable person (or organisation) should take before entering into an agreement or a transaction with another party.

The idea is that due diligence will provide objective and reliable information on the other party (entity or person) to assess any potential risk exposure that may result from engaging with the other party – and thereby be able to make an informed decision.

Certainly, while a due diligence may not uncover, foresee or quantify every possible risk exposure, the more thorough the investigation is, the more specific the contractual protection can be. Also, while a full and detailed due diligence investigation and report back is always recommended, a high-level due diligence can achieve similar results. Even a high-level due diligence can reveal any red herrings or highlight any warning signs of "deal-breaking" or "commercially negotiable" issues.

However, it's also important to note that it is not just the person (organisation) at risk. In fact, King IV notes that the "onus is on individual directors (as reasonable people) to determine whether they have the requisite skills and capacity to make a meaningful contribution and are free from apparent or actual conflicts". Additionally, considering the hugely increased exposure to personal liabilities that the Companies Act imposes on directors, it is just as important for individual directors to ensure suitable due diligence is conducted and that they themselves are kept informed on all key parties where an alliance is strategic to continued operations.

Falling through the cracks

Why then, given our legislative climate and the clear framework of rules and guidelines to regulate responsible governance, does appropriate due diligence fall through the cracks?

Simply put, because there are those who are in a position of power and responsibility, but do not act accordingly and regrettably this gives way to other evils of; lack of transparency, bad governance, nepotism, lax professional ethics and morality and greed.

If we are to truly change the status quo and affect a collective ethos of responsible business and responsible governance, then we need to be prudent and apply professional scepticism on what we believe at face value. Each of us have a role to play in acting responsibly, in support of the change towards responsible governance in society, business and government that we want to see. As individuals, the onus is on us to ensure that – over and above a formal due diligence process – our behaviour is underpinned by ethics and integrity. Without this as a second sounding board for a formal due diligence, society will continue to witness fraud, corruption and untoward business. Sadly, it is often the case that where the 'paperwork' upholds us, those with authority fail us.

As a nation, we need to get better at asking ourselves, our peers, our leaders – in all tiers of society - is it worth breaking the rules to save or make a quick 'buck'. What we say, and what we do, must mean something. As business leaders, we must ensure that our decisions are underpinned by ethics and real care, as this is when the whole business – and our economy - will benefit.

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