



Companies and Intellectual  
Property Commission

a member of **the dti** group

# Corporate Law Symposium

01 March 2013  
Emperors Palace, Boksburg  
Astrid Ludin,  
Commissioner: CIPC

## Topics covered

- Organisational priorities;
- Registration of companies and corporate names;
- Enforcement of the law;
- Business Rescue – achievements and challenges;



## Organisational priorities

- Building a regulatory organisation;
- Improving the integrity of registers;
- Strengthening service delivery



## Organisational priorities

### Building a regulatory institution

- CIPC needed to transition from a registry (CIPRO) with a small enforcement component (OCIPE) to a regulatory institution;
- Extensive process over the past 18 months where:
  - The strategy for this new organisation has been determined;
  - A structure was developed that supports the organisation with its expanded mandate as per the spirit of the Companies Act;
  - New functions have been established;
  - Benchmarks with better practice organisations were conducted;



Focus on staff training and capacity-building

## Organisational priorities

### Improving the integrity of the register

- Starting point for integrity is data quality;
- Data cleansing project almost complete; provision for pro-active monitoring of data quality and completeness;
- Need for having a better understanding of what is in fact on the register – active companies in which sectors; dormant companies holding assets, such as property; shelf companies; dormant companies that no longer trade or never traded;
- Improve compliance with “lesser” legal requirements e.g. date of filing of director changes; submission of financials etc;
- Enhance integrity of corporate names;



## Organisational priorities

### Collaboration efforts

- Collaboration with appropriate and relevant institutions a key part of our strategy;
- Actively pursuing collaboration with institutions such as banks and SARS to ensure **seamless company registration** and **enhanced security/verification**, as well as **ease of doing business**;
- Collaboration efforts also focused on communication and compliance (banks, SARS);
- Other possibilities around data disclosure and education being explored.



## Organisational priorities

### A new service delivery model

- New service delivery model envisages a larger back office and 3 small front offices (Cape Town, Pretoria and Soweto);
- Key to success will be electronic and telephonic access of CIPC – new model being implemented to essentially spread call centre/switchboard function across the organisation;
- Also implemented a fax to e-mail service and scanning project;



## Organisational priorities

### Continuous service delivery improvement

- Service delivery standards introduced in January 2012;
- Served to rally and focus organisation;
- Objective is to improve these standards every year;
- Initial adjustment to take place in coming months – with improvements in some areas, and refinements in others;
- Standards are audited – not on the scale needed at present, but more fully from next financial year;





## Registration of companies and names

- Introduction of new name reservation scheme;
  - Name reservation is not compulsory
  - If a proposed name is rejected, then the registration number becomes the name of the Company;
  - Names must not be identical or confusingly similar to other company names or to marks protected by intellectual property;
  - Market has been slow in uptake and understanding;
  - Anticipate a complication here when business names are introduced – question about role and value of company name vis-à-vis business name and trade mark;
  - Project to work through the “hierarchy” of names;



## Registration of companies and names

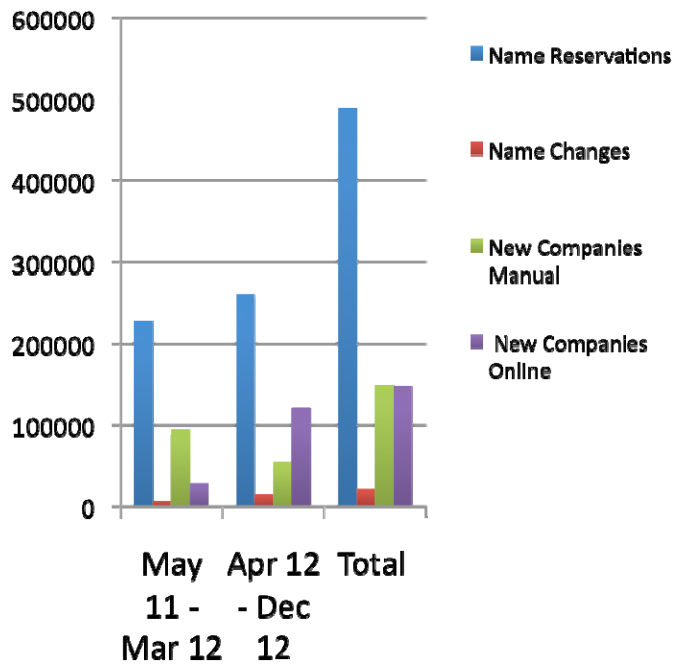
- Introduction of new name reservation and registration scheme;
  - Symbols are allowed in names i.e.. %, @, +;
  - Symbols deferred for a period of three years and CICP involved in a joint project with the Banking Associations to deal with this implementation;
  - Names are allowed to be transferred from one person to the other;
  - Defensive name registration remains;
  - In terms of associated names the Commission will require proof of association;
  - The CIPC is actively engaged in all these areas of name reservations and approvals and consistently approves names on a day after submission basis;



## Registration statistics (1 May 12-31 December 12)

	1 May 2011 – 31 March 2012	1 April - 31 December 2012	Total
Names Reservations	228 313	259 912	488 225
Name Changes	6 378	14 211	20 589
New Companies Manual	94 388	54 219	148 607
New Companies Online	27 380	120 462	147 842





- Name reservation and company registration mostly online – allows for ease of processing and online confirmations upon approval (contributes to higher efficiencies)
- Service delivery standards for name reservation is 3 days and company registration is 25 days – actual turnaround time on names is ½ day, on-line companies 3-5 days;
- Still a fair number of shelf companies being registered – bad for integrity of register and are actively discouraged;



## Enforcement under the Companies Act

- Enforcement objective:
  - To ensure the efficient, effective and widest possible enforcement of this Act, and any other legislation listed in Schedule of the Act
- Enforcement can be divided into following categories:
  - Alternative Dispute Resolution (“ADR”) which is a function of the Companies Tribunal and
  - **Investigation of complaints**
  - Pro-active investigation/inspection

Approach to date has been reactive and complaints driven. Strong compliance orientation, but pro-active enforcement should begin in the coming year.



## Enforcement under the Companies Act

Types of complaints received		
Governance: Disputes between shareholders/directors; unlawful removal of director by known persons; resignation of director not recorded; corporate identity theft	71	16%
Financial management: Fraud; reckless trading; trading in financially distressed circumstances/technically insolvent	116	26%
Disclosure: Failure to have annual financial statements, hold an AGM; not proper record keeping (financial as well as minutes); breach of fiduciary duties; refusing access to information	163	36%
Solvency and liquidity	14	3%
BEE Fronting	15	3%
Homeowner Associations	6	1%
Business Rescue	6	1%
Co-operatives	7	2%
Other	54	12%
Total	452	100%

350 complaints  
resolved by 31  
January 2013



## Enforcement under the Companies Act

- Specifically on corporate identity theft, 71 matters were received from July 2011 to January 2013 and 60 were closed.
- Where 'unknown persons' are allegedly involved in the removal of directors or members, the complainants are advised to open criminal cases with the SAPS. Investigations will also still continue with a matter if it appears that false information was knowingly provided to the CIPC.
- Section 215(2)(e) of the Companies Act specifically states that a person commits an offence when s/he knowingly provides false information to the CIPC. Should that be confirmed through the CIPC investigation, the CIPC opens a case with the SAPS to be investigated and also forward it to the National Prosecuting Authority for possible prosecution – 1 test case already in the system.



## Business Rescue

- New remedy available to distressed firms from May 2011;
- **What is the objective ?**  
Business rescue aims at avoiding liquidations and job losses by providing businesses with protection against creditors who may want to file for liquidation or take other legal action. It is an opportunity to re-organise and restructure distressed **but viable** companies to the benefit of all affected parties.
- CIPC's main role with respect to rescue is to accredit business rescue practitioners and to receive notices filed by companies. A limited compliance monitoring role is also anticipated;
- To allow learning both on part of CIPC and practitioners, a system of interim conditional licenses was introduced;





## Business Rescue

### Interim conditional licenses

- Process:
  - Financially distressed businesses that wish to initiate rescue proceedings may file the necessary notices with CIPC and identify a prospective practitioner.
  - The identified practitioner applies to CIPC to be issued with a conditional license for the specific rescue project. Such licenses are considered on an urgent basis and issued within three days;
  - Practically, practitioners are vetted upon their first application and CIPC subsequently assesses whether the specific experience level of the practitioner is appropriate for the rescue process in question;
- General guidelines were developed to assist practitioners to assess whether they would meet the criteria;
- Feedback from stakeholders and experience of the CIPC all indicate that this system is working exceptionally well.



## Business Rescue Experience to date

- To date CIPC has licensed a pool of 126 practitioners to conduct 840 business rescue processes (i.e. CIPC has issued 840 interim conditional licenses to 126 practitioners)
- Two SAQA accredited training intervention have been developed (UNISA/LSSA and CE at UP)
- No formal structures for Post Commencement Finance yet (PCF)
- High percentage does not get BR plans adopted and end in court for liquidation
- Scepticisms from the formal credit sector (Banks)
- Average turn around reported is 5.6 months



## Business Rescue

### Future Plans

- Design and implement a full accreditation model;
- Develop a competency framework for business rescue practitioners;
- Enhance education and awareness of business rescue amongst creditors, businesses and trade unions;
- Enhance available information on companies entering into business rescue, as well as compliance monitoring;



## Conclusion

- The past 22 months have been turbulent at times, because of administrative constraints;
- **But** generally, very few substantive problems experienced with the implementation of the Act;
- A lot of discussion amongst practitioners and business entities about best way to implement certain provisions and continuous clarification from our side;
- Still too early to judge the overall impact of the new law and the achievement of its objectives – but one area can be singled out – business rescue;
- Process has worked for companies and practitioners – need to keep creditors on board, to refine and to educate!



## THANK YOU

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