

## CIPC CLAMPING DOWN ON RECKLESS CONDUCT AND NON-COMPLIANCE

One of the many purposes of the Companies Act, 71 of 2008 (hereinafter referred to as “the Act”) is to provide for a predictable and effective environment for the efficient regulation of companies and other juristic persons, as described in section 7 of the Act. In recent times, it has unfortunately become more and more prevalent for companies and the persons responsible for the management thereof, to rather resort to criminal activities to reach certain goals, than to comply with legislative and common law requirements.

Part of the governance process of any company is to understand the consequences attached to decisions made, not in line with the Companies Act requirements and the impact of such decisions and consequences. It is clear from a perspective as Regulator of the Act, that many entities, is not aware of the dire impact of their decisions, or simply do not regard such consequences as relevant.

The legislator provided in Chapter 9 of the Act, for certain offences and penalties, where a person (natural and juristic) is a party to reckless conduct, providing false statements, and is generally non-compliant to the Act. For the purposes of this article, it is important to highlight the content of section 214(1) of the Act, which states as follows: -

**“214(1) A person is guilty of an offence if the person-**

- (a) is party to the falsification of any accounting records of a company;**
- (b) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person;**
- (c) was knowingly a party to an act or omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company’s securities, or with another fraudulent purpose; or**
- (d) is a party to the preparation, approval, dissemination or publication of a prospectus or a written statement contemplated in section 101, that contains an ‘untrue statement’ as defined and described in section 95.”**

(underlining my own emphasis)

During May 2023, the Commission was informed of the filing of an invalid, allegedly forged, court order. Guidance Note 1 of 2019, (as published on the CIPC website) provides clear guidance on the information to be contained in court orders, submitted to the CIPC, to ensure implementation. Unfortunately, the CIPC is not in a position to ascertain whether documentation (including court orders) are valid or not, and thus, as long as it adheres to relevant legislation, and CIPC internal requirements, such applications or court orders are processed and implemented accordingly.

It is with great dismay that the Commission learnt that the particular court order referred to above, was indeed invalid, unlawful and false. The matter was immediately reported to the SAPS in terms

of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), read with section 214 (b) and (c) of the Companies Act, for investigation.

The Commission, as Regulator of the Companies Act, will not allow the submission of fraudulent documentation, to go unnoticed without consequence. Any person convicted of an offence in terms of section 214(1) of the Companies Act, and the common law offences of fraud and forgery, will be liable to a fine or imprisonment, or both.

Companies are urged to take governance and legislative compliance seriously – ignorance is not an excuse in law, and parties found guilty of any offence in terms of the Act, will be prosecuted and punished to the fullest extent of the law.



**Mrs Lucinda Steenkamp**  
**Senior Legal Advisor: Corporate Legal**  
**CIPC**