

PORTFOLIO COMMITTEE ON PUBLIC SERVICE AND ADMINISTRATION

CIPC's efforts in assisting government prohibiting
public servants from doing business with the state



Companies and Intellectual
Property Commission

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OUTLINE / CONTENTS

1. Introduction
2. Mandate of the CIPC
3. Scope of pro-active assistance to government
4. Collaboration efforts to ensure transparency
5. Re-active assistance to government institutions and legislative framework
6. Conclusion

INTRODUCTION

- CIPC received a request to brief the Portfolio Committee on Public Service and Administration on its efforts to assist government in exercising its laws surrounding the prohibition of public servants doing business with the State.
- The Public Administration Management Regulations Service Code of Conduct, which came into effect on 1 August 2016, sought to prohibit public servants (holders of persal numbers) from doing any form of business with the State, whether in their personal capacities or as directors of companies and to declare their financial interests.
- In a bid to assist government in enforcing the abovementioned prohibitive Regulations, the CIPC's registers are open to the Department of Public Service and Administration for inspection in relation to any suspected contravention by public servants of the Regulations and the relevant Code of Conduct.
- CIPC assists in three ways, namely proactive interventions through a partnership with DPISA, improving transparency through a collaboration with National Treasury and lastly through cooperation with law enforcement entities and oversight bodies by providing requested data on an ad hoc basis. These are elaborated on in the next few slides.

THE MANDATE OF THE CIPC

- Section 187(4)(a) and (c) of the Companies Act, 71 of 2008 states that the Commission must establish and maintain a companies register; and most importantly, make the information in those registers as effectively and efficiently available to other organs of state.
- The information required to ascertain whether public servants have registered Entities(Company), is available on the CIPC companies register and Departments and Public entities have mechanisms in place to have access to that information through the CIPC web-services

THE MANDATE OF THE CIPC

- There is no legal impediment to a Public Servant registering a Company, but it must be disclosed during the Annual Financial Disclosure reporting.
- The legal position in the Companies Act is that the CIPC ONLY registers/records Directors details and NOT Shareholding. Therefore a Public Servant maybe the ultimate beneficiary of a contract who has not registered as a Director.
- An amendment has been proposed to Section 33 of the Companies Act, whereby all beneficial owners or holders of Shares will have to be disclosed to the CIPC either during the incorporation of the Entity, as well as annually at the Annual Return stage.
- The CIPC is working very closely with the FIC, SARS and the Masters Office to conclude on a governance framework and system to record Beneficial Owners and to ensure collaboration including connectivity of Database information.

SCOPE OF PRO-ACTIVE ASSISTANCE TO GOVERNMENT

- CIPC has an active SLA (Service Level Agreement) in place (renewed annually) where DPISA and other departments have access to the CIPC online platforms to verify the existence of juristic persons on our database and also verify its directors.
- The platforms provide for:
 - (a) Verification of entities;
 - (b) Verification of directors; and
 - (c) Free full disclosures of companies, which includes the history of the entity, such as director amendments, etc.

COLLABORATION EFFORTS TO ENSURE TRANSPARENCY

- National Treasury, as a collaborative partner of the CIPC, receives real-time company data and changes to companies to ensure that data on the Central Suppliers Database is up to date and relevant.
- The Central Suppliers Database is a programme of National Treasury which aims to simplify government procurement whilst having stringent verification mechanisms in place which authenticates companies at source. This enables Treasury to have a holistic view of companies that are awarded government tenders.
- There exists a triangular relationship between the CIPC, National Treasury and SARS with regards to access to company data as a mechanism to enhance compliance whilst facilitating the ease of doing business.
- It is recommended that the CSD scope is expanded to include the DPSA and Persal Data to ensure optimum screening of directors prior to the awarding of tenders (particular in respect of prohibited individuals).

RE-ACTIVE ASSISTANCE TO GOVERNMENT INSTITUTIONS AND THE LEGAL FRAMEWORK

- The CIPC assists various Organs of State in their investigations into possible fraudulent actions or contravention of the Public Service Act, 1994 and /or Public Service Regulations, 2016.
- Requests for assistance or information might be received in writing as an informal letter or formally in the form of a subpoena in terms of section 205 of the Criminal Procedure Act, 1977.
- Assistance as mentioned above is provided to institutions such as SARS, SAPS, Commercial Crimes Unit (Hawks), NPA and the SIU.
- The Auditor-General as part of its Regulatory Audit function obtains information from the CIPC database with regards to companies and its directors on an annual basis, or as and when required to cross reference it against Employee records of Auditees.

CONCLUSION

- National Treasury currently has “real-time” access to CIPC records (registers) to verify the existence of entities. The scope, however is limited to the verification of the entity and does not include verification of directors and whether same may be a public servant.
- As a result there is an increase in ad-hoc requests to assist re-actively in investigating or gaining information on a specific individual even though Departments and Public Entities have web-based access to CIPC data.
- CIPC, SARS and National Treasury are the key role-players in CSD. The inclusion of the DPISA Data as an enhanced phase will add great value.



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THANK YOU

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