

# **SMME COMPLIANCE SEMINAR**

World IP Day Celebrations 2016, Sci-Bono Discovery Centre

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Companies and Intellectual  
Property Commission

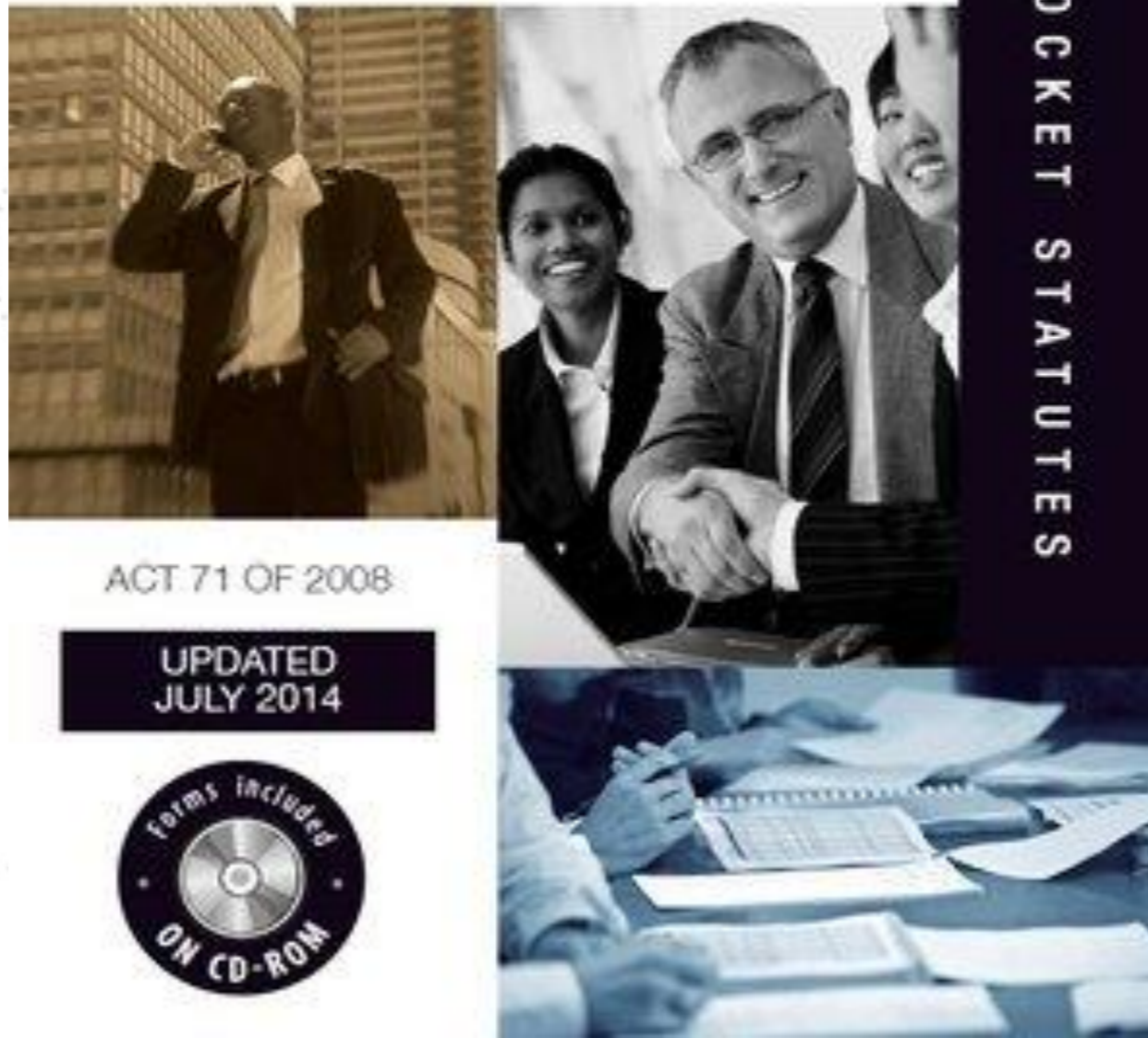
a member of **the dti** group

# Content

- **Introduction**
- **Maintaining a Company**
- **Narrative On Compliance**
- **Effects Of Non Compliance**
- **Area of Enforcement**
- **Conclusion**

# Companies Act ,Act 71 of 2008 as Amended

## COMPANIES ACT & REGULATIONS



ACT 71 OF 2008

UPDATED  
JULY 2014



JUTA'S POCKET STATUTES

# Introduction

- Since the establishment of CIPC,
  - ***automation of registration services*** has been one of the objectives,
  - ***of access to services, and***
  - ***the regulation of conduct of companies***
- The Companies Act made sure that owning a company becomes a right
- Fortunately with every right comes a responsibility...

CIPC WEBSITE



NEDBANK



CARLTON CENTER  
SUNNYPARK



FNB

HOME  
OFFICE

JSE



CAPE TOWN  
OFFICE

# Managing Child Growth



# Managing Company Growth



- With a **company**, cc, profit or non profit company similar responsibilities or obligations arise for the owners, directors and shareholders

# Narrative on Compliance

- Certain obligations by companies have to be fulfilled ***at scheduled times as prescribed in the Act***, like addresses, vacancies of auditors, AGM's, directors, annual returns, AFS, keep financial records, do not allow run the entity even when you know that you are commercially insolvent (paying of debts when they become due), performing of solvency and liquidity tests, etc.
- Some obligations can only be exercised with the consent or approval of the regulator like offering shares to the public, special resolutions where majority agree, business rescue processes,



# Effects of Non-Compliance

- With a company on the other hand, ***failure to adhere to the governance requirements can lead to enforcement proceedings*** having to be initiated against it and its owners which may even lead to its removal from the register of active entities resulting in personal liability for its members and loss of jobs for employees depending on the type and cause of non compliance
- False Statements, reckless conduct, and non compliance can result in a person being found guilty of an offence

# Effects of Non-Compliance (cont.)

- Failure to pay annual return ***can lead to deregistration***
- Failure to comply with any other requirement in the Act can ***lead to formal investigations*** which can result in a compliance notice having to be issued against the company and its directors
- The following can happen, one being prosecution or an administrative fine, sometimes even imprisonment or both upon conviction (minimum 12months – maximum 10 years)

# Area of Enforcement

**Enforcement is the action necessary when compliance is not present.** Enforcement requires legal or administrative action. Enforcement is the use of administrative tools as well as inspection powers granted under legislation (section 209 and 169 of the Companies Act) to determine and compel compliance with the applicable laws.

Therefore, without these powers (Sec 169 and 209) the CIPC would not be able to enforce the corporate entities to comply with the Act.

***The ultimate goal of Enforcement is to prevent the occurrence of violations, a goal primarily achieved through education designed to encourage voluntary compliance.***

When all else fails, legal enforcement action can and must be used as a tool to achieve compliance. Legal enforcement action can range from prescribed penalties to deregistration or prosecution.

Within this range of enforcement possibilities, the corrective action (Compliance notices) is the most suitable and appropriate for the occurrence of non-compliance with the Act unless the non-compliance is very serious – of a criminal nature.

# Crowe Horwarth Corporate Governance Framework

Manage Risk and Achieve Compliance With Stronger Corporate Governance



# Conclusion

- Keep accurate, proper and complete accounting records
- **File or lodge changes with the regulator as and when they occur** to ensure proper governance and transparency
- **Ensure that financials are prepared in time**, and lodge the latest set of financials with the annual return, **reflect correct turnover information** on the annual return as we do compare it with our AFS on record
- Hold your AGM's and allow stakeholders to participate and be open with the same stakeholders
- **Rotate your auditors** (lead auditor) every five years, have a social and ethics committee or seek exemption from Companies Tribunal for qualifying companies
- <http://www.linkedin.com/pulse/compliance-myths-what-every-ceo-board-member-should-know-methven> Article on Linked-In by Julie Methven (CEO – Compliance SA)

# Thank you/ Questions/Comments

