

Companies and Intellectual
Property Commission

REPORT ON INVESTIGATION INTO

PROFLEX INVESTMENTS (PTY) LTD

REG No: 2013/197595/07

FILE REFERENCE: G38 (2018)

INSPECTOR: DUMILE RUBUSHE

DATE : 16 MAY 2018

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ABBREVIATIONS

"Act"	The Companies Act, 71 of 2008 (as amended)
"CIPC"	Companies and Intellectual Property Commission
"Commissioner"	The Commissioner of Companies and Intellectual Property Commission
"Inspector"	Nomathemba Rubushe is duly directed as inspector in terms of Sections 169 (1) (c) of the Companies Act, 71 of 2008 by the Commissioner's notice to investigate dated 27 February 2018
"The Company"	Proflex Investments (Pty) Ltd, Reg. 2013/197595/07
"The Complainant "	AmaBhungane Centre for Investigative Journalism NPC
"The Director"	Mongezi Mlanjana

Annexures

Annexure A	Inspector Form CoR137.1 Notice to Investigate date 27 February 2018
Annexure B	Form CoR 137.3 Request for Information dated 28 February 2018
Annexure C	Mongezi Mlanjana's email to inspector dated 1 March 2018
Annexure D	Inspector's email to Mongezi Mlanjana dated 2 March 2018
Annexure E	Inspector's letter to Mongezi Mlanjana dated 5 April 2018

1. BACKGROUND

A complaint was lodged with the Commission by AmaBhungane Centre for Investigative Journalism NPC against Proflex Investments (Pty) Ltd for failure to comply with the provisions of Section 26 (2) of the Companies Act. The complainant AmaBhungane Centre for Investigative Journalism NPC, through its lawyer, Ms Karabo Rajuili alleges that on 18 July 2017 she made a request on the prescribed CoR 24 in terms of Section 26(2) of the Act to Proflex Investments (Pty) Ltd. She requested access to the securities register of the Company. The official 14 day statutory period expired and no response was received from the Company. Subsequent to the follow up by the Complainant, the Director sent a summary share register to the Complainant. Despite her request, the Director of Proflex Investments (Pty) Ltd have failed to provide her with a complete share register.

2. MANDATE

In terms of Section 168(1) (b) of the Companies Act, No 71 of 2008 ("the Act") as amended, any person may file a complaint in writing with the Commission in respect of any provision of this Act.

To effectively deal with the complaint, Ms Nomathemba Rubushe was per Form CoR 137.1 (attached as Annexure "A") directed to investigate the complaint against the above Company.

3. LEGISLATIVE FRAMEWORK

3.1 The relevant sections of the Companies Act for the purpose of this investigation are set out below.

Section 168: Initiating a complaint

- 1) Any person may file a complaint in writing—
 - a) with the Panel in respect of a matter contemplated in Part B or C of Chapter 5, or in the Takeover Regulations; or
 - b) with the Commission in respect of any provision of this Act not referred to in paragraph (a), alleging that a person has acted in a manner inconsistent with this Act, or that the complainant's rights under this Act, or under a company's Memorandum of Incorporation or rules, have been infringed.
- 2) A complaint may be initiated directly by the Commission, or the Panel, as the case may be, on its own motion or on the request of another regulatory authority.
- 3) The Minister may direct the Commission, as contemplated in section 190(2)(b), or the Panel to investigate—
 - a) an alleged contravention of this Act; or
 - b) other specified circumstances.

Section 170

Outcome of investigation

- (1) After receiving the report of an inspector, the Commissionmay —
 - (a)
 - (b).....
 - (c)
 - (d)
 - (e)
 - (f) or
 - (g) in the case of —
 - (i) the Commission, issue a compliance notice in terms of section 171...
- (2) The Commission
 - (a) in its sole discretion, may publish a report contemplated in subsection (1); and
 - (b) irrespective whether it publishes such a report, must deliver a copy of the report to —
 - (i) the complainant,.....;
 - (ii) any person who was a subject of the investigation;
 - (iii)
 - (iv).....

3.2 The relevant sections of the Companies Act and Regulation relating to the complaint are the following:

Section 26 Access to company records

- (1) A person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the company:
 - (a) The company's Memorandum of Incorporation and any amendments to it, and any rules made by the company, as mentioned in section 24 (3) (a);
 - (b) the records in respect of the company's directors, as mentioned in section 24 (3) (b);

- (c) the reports to annual meetings, and annual financial statements, as mentioned in section 24 (3) (c) (i) and (ii);
- (d) the notices and minutes of annual meetings, and communications mentioned in section 24 (3) (d) and (e), but the reference in section 24 (3) (d) to shareholders meetings, and the reference in section 24 (3) (e) to communications sent to holders of a company's securities, must be regarded in the case of a non-profit company as referring to a meeting of members, or communication to members, respectively; and
- (e) the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24 (4) (2) A person not contemplated in subsection (1) has a right to inspect the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

Section 26 (9) of the Companies Act

(9) It is an offence for a company to fail to accommodate any reasonable request for access, or unreasonably refused access, to any record that a person has a right to inspect or copy in terms of this section or section 31 or to otherwise impede, interfere with, or attempt to frustrate, the reasonable exercise by any person of the rights set out in this section or section 31.

Section 171 of the Act reads as follows:

171. Issuance of compliance notices.—

(1) Subject to subsection (3), the Commission, or the Executive Director of the Panel, may issue a compliance notice in the prescribed form to any person whom the Commission or Executive Director, as the case may be, on reasonable grounds believes—

(a) has contravened this Act; or

(b) assented to, was implicated in, or directly or indirectly benefited from, a contravention of this Act, unless the alleged contravention could otherwise be addressed in terms of this Act by an application to a court or to the Companies Tribunal.

(2) A compliance notice may require the person to whom it is addressed to—

(a) cease, correct or reverse any action in contravention of this Act,

(b) take any action required by this Act;

(c) restore assets or their value to a company or any other person;

(d) provide a community service, in the case of a notice issued by the Commission; or

(e) take any other steps reasonably related to the contravention and designed to rectify its effect.

(3) When issuing a notice in terms of subsection (1) to a regulated person or entity, the Commission or Executive Director, as the case may be, must send a copy of the notice to the regulatory authority that granted a licence or similar authority to that regulated person or entity, and in terms of which that person is authorised to conduct business.

(4) A compliance notice contemplated in subsection (1) must set out—

(a) the person or association to whom the notice applies;

(b) the provision of this Act that has been contravened,

(c) details of the nature and extent of the non-compliance;

(d) any steps that are required to be taken and the period within which those steps must be taken; and

(e) any penalty that may be imposed in terms of this Act if those steps are not taken.

(5) A compliance notice issued in terms of this section, or any part of it, remains in force until—

(a) it is set aside by—

(i) the Companies Tribunal, or a court upon a review of the notice, in the case of a notice issued by the Commission; or

(ii) the Takeover Special Committee, or a court upon a review of the notice, in the case of a notice issued by the Executive Director; or

(b) the Commission, or Executive Director, as the case may be, issues a compliance certificate contemplated in subsection (6).

(6) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission or the Executive Director, as the case may be, must issue a compliance certificate.

(7) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission or the Executive Director, as the case may be, may either—

(a) apply to a court for the imposition of an administrative fine; or

(b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 214 (3), but may not do both in respect of any particular compliance notice.

4. THE INVESTIGATION

4.1 On 28 February 2018, the Inspector issued a Request for Information (Form 137.3) to the Director of Proflex Investments (Pty) Ltd (attached as Annexure "B"). The Inspector requested the same information that the Complainant requested by way of Form CoR24 in terms of Section 26 (2) of the Companies Act. The Director was requested to provide a complete shareholders Securities Register of Proflex Investments (Pty) Ltd i.e. the share register.

4.2 On 1 March 2018 the Director provided the Inspector through an email the summary share register (attached as Annexure "C").

4.3 On an email dated 2 March 2018 the Inspector informed the Director that CIPC has received the same share register which the complainant pointed out as the deficiencies in the disclosure (attached as Annexure "D").

4.4 On 5 April 2018 it was further brought to the Director's attention that he should provide CIPC with the complete share register as requested (attached as Annexure "E").

4.5 Through the letter the Directors was required to provide the CIPC with a written response giving full details of events which might have led to the complaint and if any steps were taken to avoid possible non-compliance with Section 26 (2) of the Act. The Director did not forward any response nor his explanation for failure to respond. Despite numerous reminders as outlined above by the Inspector to the Director, no response was received from the Director of Proflex Investments (Pty) Ltd.

5. CONSIDERATION

- 5.1 In light of the summary share register that the Inspector has received from Mr Mongezi Mlanjana, it appears that Proflex Investments (Pty) Ltd has not complied with section 26 (2) of the Act.
- 5.2 The request by the Complainant was reasonable and done in accordance with the provisions of the Act. The Director was through CoR137.3 Request for Information, emails and a letter by the Inspector given an opportunity to provide the requested information and/ or reasons for failure to give the information to the complainant. The Director failed to adhere to the requests by the Complainant and therefore contravened the provisions of Section 26 (2) of the Act. In light of the above, it was clear that the matter has not been resolved. It is concluded that Proflex Investments (Pty) Ltd be issued with Compliance Notice affording it a final opportunity to comply with the request by the Complainant.
- 5.3 In terms of Section 170 (2) (b) (i) and (ii) as outlined above as outcome of investigation, the CIPC is obliged to deliver a copy of the report of investigation to the Complainant.

6. RECOMMENDATIONS

It is recommended that:

6.1 The Commissioner approve and sign the Compliance Notice (attached as Annexure "A") in term whereof the Director of Proflex Investments (Pty) Ltd is required within 20 business days from the date of the Compliance Notice, to:

- (i) submit a copy, certified as a true copy of the original complete security/share register of **Proflex Investments (Pty) Ltd (2013 /197595 /07)** on the basis required by Section 26 (5) of the Act to Ms Karabo Rajuli of AmaBhungane Centre for Investigative Journalism NPC; and
- (ii) submit to the Commission a statement on AmaBhungane Centre for Investigative Journalism NPC letterhead signed by Ms Karabo Rajuli as the person authorised to represent AmaBhungane Centre for Investigative Journalism NPC in all access to information requested as proof that she received the complete security / share register.

6.2 A copy of this report to be sent to both the Complainant, AmaBhungane Centre for Investigative Journalism NPC and the Respondent, Proflex Investments (Pty) Ltd.



.....
Nomathemba Rubushe

Appointed Inspector

Date: 16 / 05 / 2018

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 139.1

About this Notice

- This form is issued in terms of section 171 of the Companies Act, 2008, and Regulation 139 of the Companies Regulations, 2011.
- You have the right within 15 business days to apply in terms of section 172, for an order confirming, modifying or setting aside all or part of this Notice. If the Notice was issued by the Commission, an application must be made to the Companies Tribunal in Form CTR 142. If this Notice was issued by the Takeover Regulation Panel, an application may be made to the Takeover Special Committee.
- A Compliance Notice remains in force until it is set aside on review, or until the issuing authority later issues a compliance certificate in the matter.

Contacting the
Commission

The Companies and Intellectual
Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Compliance Notice

Date: 16 May 2018

To:

(Insert name and registration number of company, or name and identity number of individual)

Name: Mr Mongezi Mlanjana (ID No 7502275370086) Director of Proflex
Investments (Pty) Ltd

Registration No.: 2013/ 197595 /07

From: The Commission

The Takeover Regulation Panel

The Commission, or the Takeover Regulation Panel, as the case may be, believes on reasonable grounds that the company named above has contravened the Companies Act, 2008. In particular, the Commission states that the company has failed to comply with Section 26 of the Act. Specifically:

(Insert details of the nature and extent of the conduct that is the subject of this Notice)

PLEASE SEE ATTACHED ANNEXURE "A"

You are required to take the steps set out in the attached statement to bring the company's conduct into compliance with the Act.

Failure to comply with this Notice may result in any of the following consequences:

- (a) prosecution in terms of section 214 (3) of the offence of failing to satisfy a compliance Notice, the maximum penalty for which is a fine or 12 months imprisonment; or
- (b) imposition of an administrative fine, in terms of section 171 (7)(a).

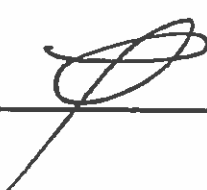
If this notice requires the company to file overdue annual returns, failure to comply may result in the deregistration of the company, in terms of section 80 to 82.

Any person who is repeatedly guilty of an offence in terms of the Act, including the offence of failure to satisfy a compliance notice, may be placed on probation as a director, or declared a delinquent director, and disqualified from serving as a director, in terms of section 162.

Name and Title of person signing on behalf of the Commission or Panel:

Rory Voller

Authorised Signature:

 2018/5/16

**Companies and Intellectual Property Commission
Republic of South Africa**

Annexure "A"

STATEMENT TO BRING THE CONDUCT OF PROFLEX INVESTMENTS (PTY) LTD INTO COMPLIANCE WITH THE COMPANIES ACT NO.71 OF 2008 ("ACT")

The complainant, AmaBhungane Centre for Investigative Journalism NPC represented by Ms Karabo Rajuli had on the 28th February 2018 submitted a request for information on the Form CoR 24 to the company. The complainant requested the company's security register. Despite numerous reminders to the company by the complainant, the company has to date not submitted the requested information to the complainant.

Furthermore the appointed Inspector send a Request for Information (Form 137.3) requesting the director of the company to submit the company's security register. On 1 March 2018 the director provided the Inspector with the summary share register. The Inspector pointed out the deficiencies in the disclosure and further brought to the director's attention that he should provide Inspector with the complete share register as requested.

The company has therefore failed to comply with section 26 (5) of the Act.

Within 20 business days of this notice you are required to

- (i) submit a copy, certified as a true copy of the original complete security/share register of Proflex Investments (Pty) Ltd (2013 /197595 /07) on the basis required by Section 26 (5) of the Act to Ms Karabo Rajuli of AmaBhungane Centre for Investigative Journalism NPC; and
- (ii) submit to the Commission a statement on AmaBhungane Centre for Investigative Journalism NPC letterhead signed by Ms Karabo Rajuli as the person authorised to represent AmaBhungane Centre for Investigative Journalism NPC in all access to information requested as proof that she received the complete security / share register..

Failure to comply with the above requirement may result in the Commission applying to a court for the imposition of an administrative fine or referring the matter to the National Prosecuting Authority for prosecution as an offence in terms of Section 214 (3) of the Companies Act, No 71 of 2008 as amended.

You may in terms of Section 172 apply to the Companies Tribunal or a court to review the notice within 15 business days after receiving this notice or such longer period as may be allowed on good cause shown.



Dumile Rubushe

From: Karabo Rajuili <karabor@amabhungane.org>
Sent: 21 June 2018 10:18
To: Mongezi Mlanjana
Cc: Dumile Rubushe
Subject: Re: Share Register Full - 18-09-2017.pdf

Good day Mongezi,

I confirm receipt of the document.

We are satisfied on our end at amaBhungane that the shared register now complies with the Act. I assume however, that the CIPC must give final confirmation on this matter.

Regards,
Karabo

On Wed, Jun 20, 2018 at 11:18 AM, Mongezi Mlanjana <mongs001@gmail.com> wrote:
Good morning Karabo and Ms Rubushe

Please find attached Full Share Register as requested, apologies for the delay, my device was faulty hence I took long to submit, it was no disrespect to either of you. I trust you will confirm receipt and advise should you need more information.

Take care and enjoy your day

Mongezi Mlanjana
0730407382

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Karabo Rajuili
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+27 (0)82 365 6553
Skype: karabo.rajuili
Twitter: [@KaraboRajuili](https://twitter.com/KaraboRajuili)

Companies and Intellectual Property Commission
Republic of South Africa

A

Form CoR 139.2

Compliance Certificate

About this Notice

- This form is issued in terms of section 171 of the Companies Act, 2008, and Regulation 139 of the Companies Regulations, 2011.

Date: 16 June 2018

To:

(Insert name and registration number of company, or name and identity number of individual)

Name: Mr Mongezi Mianjana (ID No 750227.....) Director of Proflex Investments
(Pty) Ltd

Reg/ID No: 2013/ 197595 /07

From: The Commission

The Takeover Regulation Panel

On 16 May 2018, the Commission, or the Takeover Regulation Panel, as the case may be, issued a compliance notice in this matter citing a failure to comply with section 26 of the Act.

The issuing authority is satisfied that the requirements set out for compliance have been met.

Contacting the
Commission

The Companies and Intellectual
Property Commission of South Africa

Postal Address

PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Name and Title of person signing on behalf of the Commission or Panel:

Rory Volley : COMMISSIONER

Authorised Signature:



2018/06/16