

MEDIA RELEASE

Date: 05 August 2024

Our Ref: **CCDR 150/2019**

“without prejudice”

PROGRESS UPDATE ON OBJECTIVES OUTLINED IN THE MEDIA RELEASE PUBLISHED ON 06 AUGUST 2022

Inter-Regulator Investigation On Nova Propgrow Holdings Ltd, Sharemax Investments (Pty) Ltd And The Property Syndication Industry

1. On 10 August 2022, the CIPC published a Media Release (“the publication”) titled “COMPLIANCE NOTICE ISSUED TO NOVA PROPGROW GROUP HOLDINGS LTD”, with a subheading “Inter-Regulator Investigation Following Failure to Satisfy the Commission from a Notice to Show Cause Regarding Reckless Trading or Trading Under Insolvent Circumstances”.
2. The Commission’s mandate, though the inter-regulator investigation covered other pieces of legislation that regulated various parts of the Property Syndication Industry, remains confined to the Companies Act, 71 of 2008 (as amended) (“the Act”).
3. One of the major activities stated in the publication was to embark on an inter-regulator investigation, the purpose of which would be the realisation of a legally accurate and equitable outcome for investors, the companies and directors.
4. The publication stated other various activities that would ensue to achieve certain itemised objectives, an update of which is included under each item below:

4.1. *gathering and collating the actual facts and legal framework(s) that were relied upon and applied to cause a cessation of operations of the then Sharemax property syndication companies, which culminated in the formation of Nova Property Group Investments (Pty) Ltd and Nova Propgrow Group Holdings Ltd*

This has been largely achieved, albeit, limited in part to pre-litigation documentation. It is expected that during the 30-business days window period contemplated in paragraph 8 below, legal documents archived in the High Courts, vesting under other regulators and/or in the possession of key litigants (former of current) will be availed to supplement the compilation of a final inter-regulator report.

4.2. *assessing the requisite enforcement action to be taken by the rightful regulator (s), in the context of the regulatory parameters within which NOVA exists*

This will be informed by the outputs and outcomes of the contemplated sitting/hearing and the final inter-regulator report.

4.3. *reaching a common understanding of the outputs and outcomes of specific actions that were set in motion by the decisions made by certain regulatory stakeholders, the content of which will inform the most accurate remedial action required to be taken in order to address the contraventions identified in NOVA's annual financial statements*

This will be determined by the outputs and outcomes of the contemplated sitting/hearing and the final inter-regulator report.

4.4. *accurately and satisfactorily concluding on this case without causing any undue damage to those charged with governance in Nova PropGrow Group Holdings Ltd, debenture holders and other affected stakeholders*

This will be determined by the outputs and outcomes of the contemplated sitting/hearing and the final inter-regulator report. Should a need arise to approach a competent court, the conclusion will be determined by the outcomes of the court proceedings.

4.5. *identifying the most relevant regulator to which the case should be escalated for matters beyond the ambit of the Commission's jurisdiction*

This will be determined by the outputs and outcomes of the contemplated sitting/hearing and the final inter-regulator report. Based on current findings, the applicable regulator, per Section 170, is the National Prosecuting Authority.

5. Further to the above, the Media Release stated: ...*"the Commission is of the view that the conditions under which NOVA has been operating are diametrically opposed to the purposes of the Act and should not be permitted to continue without intervention."*

5.1. As at the publication of this Media Release, one of Nova's subsidiaries, namely Nova Property Group Holdings Ltd 2017/427314/06, an integral part of a contentious Scheme of Arrangements, constituting one of the major areas under investigation; had been deregistered for failure to file and pay annual returns, per Section 33 of the Act. This affirms CIPC's averment that intervention is necessitated to defend and uphold the purposes of the Act, inter alia.

5.2. While litigation between the CIPC, the Nova Board and the Companies Tribunal is still ongoing, stemming from disputes about the Compliance Notice issued to Nova in July 2022, the outputs of the inter-regulator investigation are expected to dissolve the dispute, with the potential of referring the case to a court due to jurisdictional merits.

6. Though the Act requires the Commission to ensure that contraventions of the Act are promptly and properly investigated, the expeditious resolution of matters under investigation must be diligently discharged without a trade-off between accuracy and speed of resolution.
7. A key and uncompromisable due consideration of the inter-regulator investigation, following the thread of paragraph 6 above and which guided the actions outlined in the succeeding paragraphs herein, is adherence to the overarching principles of co-operative government and intergovernmental relations stipulated in Section 41 of the Constitution.
8. The Commission, guided by Section 41 of the Constitution and Section 188 of Act, contemplated on holding an inquisition/sitting to interrogate the content of its preliminary report with fellow regulators, affected parties and interested parties (limited to organs of state, e.g. SARS), which encapsulates the findings, arguments and recommendations of the Commission on how to approach and resolve the predicament in which certain organs of State find themselves and how to potentially resolve the legal conundrum posed by the findings at hand. The said inquisition/sitting was initially planned for the month of May 2024.
9. Due to conflicting diaries and administrative time constraints, the Commission postponed the meeting to early June 2024. Given the unprecedented nature of the investigation, a neutral chairperson or facilitator was sought to chair the meeting and subsequently be tasked with administering and drafting a final report. However, this process was regrettably met with time constraints as well.
10. The Commission then resolved to simply avail the preliminary report to regulators and affected parties so they could make inputs over a period of 30-business days post-delivery for the draft final report. This would afford parties sufficient time to interrogate the report and provide the necessary input and supporting evidence prior to a formal sitting/hearing. Thereafter, a meeting (the said inquisition/sitting) to map the final verdict and agree on applicable legal remedies within the context of Section 41 of the Constitution and subordinate legislation would convene.
11. A date suitable for all affected parties, regulators and interested parties (limited to organs of State) is yet to be set. This will follow the effluxion of the 30-business days alluded to in paragraphs 4.1 and 8 above, accompanied by a draft final report that will constitute the full body of findings, merits, considerations and recommendations etc. to realise the purpose of the inter-regulator investigation and its related objectives.
12. It is trite that the Commission is not a court and has not been vested with the same jurisdiction as that of a court. As such, any conclusion articulated herein or elsewhere in previous communications does not constitute the equivalent of a ruling, judgement or order.
13. Where an organ of State over-reached its powers, contrary to Section 41 of the Constitution, the legal remedies guided by the overarching principles of co-operative government and intergovernmental relations will apply.
14. In line with Section 185 (2)(c) of the Companies Act, 71 of 2008 (as amended), the Commission must be impartial and perform its functions without fear, favour, or prejudice. This is and remains the thrust of its investigative and administrative efforts in the cases

underpinning the inter-regulator investigation and consequent preliminary report. Affected parties are fellow regulators are therefore exhorted to refrain from speculations about the delays pertaining to the publication/release of the preliminary report, remain objective and await the publication/release of the said report.

15. The Commission, driven by an unwavering commitment to defend and uphold the Constitution, maintain regulatory integrity, promote the economic welfare of the citizens of South Africa and give vent to the purposes of the Act, hereby reaffirms its intent and resolve to publish the preliminary report as soon as practically possible to all affected parties, applicable fellow regulators and interested parties (limited to organs of State). Reference to 'limited to organs of State' is circumscribed to interested parties.
16. It should be noted that the preliminary report referred to herein does not constitute the final findings of the inter-regulator investigation, as its content stand to be modified/alterd by the envisaged input contemplated in paragraphs 9 and 10 above.
17. Given the gravity of the legal ramifications that may ensue subsequent to the contemplated inquisition/sitting, which may manifest in the form of rescission and/or set-aside applications by several parties, it is recommended that pending litigation by the State or representatives of the State; against parties accused of contravening the Act within the context of operating, promoting, marketing, managing etc. a property syndication company/scheme, be held in abeyance until the Constitutional processes alluded to herein have been observed in full. However, jurisdictional discretion may be applied.
18. Use of the preliminary report by any party in any pending litigation pertaining or incidental to parties mentioned in any communication published by the Commission is discouraged.
19. The Commission's rights remain firmly reserved.

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