

A DECADE OF CORPORATE REGULATORY COMPLIANCE MONITORING AND ENFORCEMENT ACTIONS BY THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

A TEN-YEAR REVIEW FROM APRIL 2013 TO MARCH 2023

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CORPORATE REGULATORY COMPLIANCE MONITORING AND ENFORCEMENT

A TEN-YEAR REVIEW OF THE CORPORATE ENFORCEMENT ACTIONS BY THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION FROM APRIL 2013 TO MARCH 2023

By

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(in collaboration with the CGSE and CCDR Units)

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EXECUTIVE SUMMARY

The Companies Act 71 of 2008 (“the Companies Act”) came into effect on 1 May 2011 as the result of a corporate law reform process initiated by the Department of Trade, Industry and Competition. One of the key features of the 2008 Act was to decriminalize company law and establish independent and suitably empowered bodies to achieve compliance through the effective administrative enforcement of the legislation. Consequently, the Companies and Intellectual Property Commission (“CIPC”) was formed as a corporate enforcement agency by the amalgamation of the Registrar of Companies at that time (“CIPRO”) and the Office of Companies and Intellectual Property Enforcement (“OCIFE”), with effect from 1 May 2011, in line with the effective date of the new Companies Act.

The Commission embarked on a benchmarking exercise to build capacity and capability, and to establish the necessary internal structures and processes for the performance of its newly mandated functions. As part of this restructuring, the Enforcement and Compliance business unit was established to monitor compliance, investigate complaints and to efficiently and effectively enforce the provisions relating to the governance and disclosure requirements of the Companies Act, Close Corporations Act, Share Block Control Act, Co-operatives Act, and the Protection of Businesses Act. Effectively from October 2013 onwards, the unit consisted of two sub-programmes:

- ❖ The Corporate Governance, Surveillance, and Enforcement (“CGSE”) unit is responsible for investigating formal complaints; ensuring that compliance with the Act is monitored, investigated, and enforced; improving and enhancing the corporate governance landscape in South Africa; and administering the accreditation of agencies for Alternative Dispute Resolution.
- ❖ The Corporate Compliance and Disclosure Regulation (“CCDR”) unit is responsible for the investigation of reportable irregularity reports by independent reviewers and auditors; the administration, vetting and registration of prospectuses; and monitoring compliance of annual financial statements with the provisions of the Act and financial reporting standards to promote the reliability of financial statements.

Collectively these two units perform the corporate administrative enforcement functions of the CIPC.

The investigators of the units are all appointed under Section 209 of the Companies Act as inspectors with the same rights as that of a peace officer as defined in Section 1 of the Criminal Procedure Act 51 of 1977.

This report attempts to give an overview of the first decade of enforcement interventions undertaken by these units and the remedial and administrative sanctions imposed since the units were established. The period under review covers the ten years from April 2013 to March 2023.

The CIPC follows a balanced and proactive enforcement approach that is a combination of cooperative and deterrence-based strategies:

- ❖ Administrative action for contraventions instils awareness among corporates. Adherence with the Act is ensured and enforced by way of the investigation and complaints system:
 - Accordingly, enquiry and/or change management letters are issued to the Board of Directors during investigations to request explanations and applicable supporting documents, or to guide the Board in correcting instances of non-compliance and improve their governance and internal controls.
 - The issuing of compliance notices is an integral part of this system and encourages adherence by non-responsive corporate entities through the granting of compliance opportunities.
 - The small percentage of cases that eventually conclude with a compliance notice, indicates that the CIPC’s balanced strategy of cooperative enforcement works to support companies to improve their compliance and correct instances of non-compliance through cooperation efforts.
- ❖ The prosecution of offences achieves a deterrent effect and ensures the adoption of good corporate governance practices. Non-compliant matters may be escalated to the National Prosecuting Authority for criminal conviction, or to the Office of the State Attorney for the imposition of administrative fines.
- ❖ Continuous awareness and education initiatives such as seminars, conferences, webinars and the publication of notices and guidance practices, ensure the promotion of stakeholder engagements and collaboration to achieve a knowledgeable and informed business community.

- ❖ A proactive investigation method is encouraged whereby offences and cases involving the public interest are sourced from newspapers, news reports and electronic media for further investigation.
- ❖ The performance of physical or virtual site inspections to monitor the compliance and accuracy of company records, accounting records and other disclosure requirements further enhances the reach of the Commission's enforcement activities.
- ❖ The majority of the compliance notices taken on review to the Companies Tribunal were either dismissed in agreement with the CIPC investigator's decision and the terms of the compliance notice, or were merely granted an extension of time to comply or a modification of the terms. This indicates that the CIPC's corporate investigations and inspector reports are overall of a high standard and hold up to legal scrutiny and judicial review.

Over the past decade the Enforcement and Compliance units experienced and had to overcome several challenges:

- ❖ The CIPC inherited CIPRO's legacy of poorly maintained ICT infrastructure, organizational stagnation, low employee morale, poor service delivery, customer dissatisfaction and the negative publicity that damaged the organizational reputation of CIPRO.
- ❖ There was an initial lack of highly skilled staff trained in corporate law, and having investigative and regulatory compliance monitoring, financial statement analysis, forensic auditing, and evidence gathering skills. Further capability constraints included the unavailability of structured data and data analytics capabilities.
- ❖ The manual case management system and the overall lack of integration of and access to CIPC systems, databases and information makes investigations difficult and sometimes inefficient. Case documents are mostly stored on the stand-alone individual user desktops of investigators, several versions exist of the case registers in the format of Excel spreadsheets which are not always updated appropriately or readily accessible to all investigators. The outcomes of investigation findings are therefore not always known which

makes it difficult to measure the real impact of the units' enforcement activities.

- ❖ CIPC occasionally experienced a lack of external and internal enforcement coordination, stakeholder participation and embracement of new practices and procedures. The Commission was criticized for the lack of adequate and timely stakeholder engagement and collaboration efforts when new processes were introduced.

Over the ten-year period, CGSE and CCDR conducted several proactive investigations in the form of targeted drives and surveillance sweeps:

- ❖ Companies were targeted and identified for these initiatives through XBRL submissions and the data analysis capabilities of the XBRL system, Companies Tribunal decisions, media reports and the State Capture Commission Report.
- ❖ Some of these interventions included the 2014 IRBA financial drive, Social and Ethics Committee compliance drives, and initiatives to ensure the disclosure of director remuneration, that audit committees are properly constituted, that companies are paying the correct annual return fees, and are compliant with the submission requirements of annual financial statements ("AFS") and financial accountability supplements.
- ❖ Several market tests were performed to gauge the compliance levels of state-owned companies, the establishment and functions of Social and Ethics Committees, and the measures implemented by audit service providers to ensure compliance with the Act's auditor rotation requirements.

Over the decade under review, CGSE and CCDR initiated and were actively involved with several projects:

- ❖ The introduction by the CIPC of In-line eXtensible Business Reporting Language ("iXBRL") as a digital reporting mechanism to simplify the submission of AFS, was the first major roll-out of XBRL in South Africa and paved the way for other regulators to follow suit. The CIPC's back-end regulatory processes were automated, via Workflow and Business Intelligence reporting implemented on the XBRL data, to enhance the Commission's investigative and compliance monitoring capabilities and its overall regulatory effectiveness.

- ❖ A Compliance App was developed in the form of an electronic Compliance Checklist that must be completed annually by entities to facilitate the compliance monitoring of companies, and to ensure that the Commission has access to reliable information for the analysis of compliance and industry trends.
- ❖ The Forced Compliance initiative encouraged companies to comply with compliance notices. It consisted of a system enhancement that exposed the non-compliant status of companies that failed to comply with a compliance notice on the CIPC system and on the companies' disclosure certificates. The initiative contributed to increased levels of transparency, so that any third party who is doing or wants to do business with a company may be aware of the non-compliance.
- ❖ A Cold Case register was established as an enforcement strategy to record non-compliant entities that did not adhere to an issued compliance notice. The project was accompanied by the creation of a coordinated and collaborative referral procedure and process whereby cases could be referred to the State Attorney for the enforcement by the court of administrative fines in terms of Section 175 of the Act.
- ❖ Investigators from both units were designated to investigate and enforce the corporate compliance of private and public companies implicated by the report of the Zondo Commission of Inquiry into Allegations of State Capture.
- ❖ As the regulator of legal persons, the CIPC has been a key player in the establishment of a beneficial ownership regime in South Africa. The CIPC was actively involved in the timely and collaborative implementation of a Beneficial Ownership ("BO") register to collect data on beneficial owners, and to assist law enforcement agencies to monitor and combat money-laundering and terrorist financing activities. CIPC contributed in the process for removal of South Africa from the Financial Action Task Force's ("FATF") "grey list," by embarking on an active BO enforcement drive from October 2023. Companies that failed to submit BO information, as well as cases where submitted information was flagged for anomalies, were proactively investigated. Site inspections were also performed for several

companies where the filed information was deficient or non-compliant.

- ❖ The CIPC has since 2022 been proactively collaborating with the International Sustainability Standards Board ("ISSB"), accounting and auditing firms and other regulators, to lead and carve the way for implementing the International Financial Reporting Standards ("IFRS") Foundation's Sustainability Disclosure Standards in South Africa, and to promote the readiness and acceptance of the standards among corporate entities. The CIPC developed a road map to implement a change management plan that involves the upskilling of CIPC staff, collaborative inter-regulatory and other stakeholder engagements, and awareness and education initiatives for corporate entities.

Several high-profile or high-impact cases were investigated over the period, many of which were reported in the media:

- ❖ The context and focus of these enforcements covered a range of provisions from the Act and included the investigation of auditor conduct, unauthorized director or member changes, unauthorized share issue, improper loans or other financial assistance to directors, reckless trading, cases involving property syndication, improper accounting practices or the falsification of accounting records, misstatements in the financial records, and the timely preparation and approval of AFS.
- ❖ A variety of Homeowners Associations, private companies, public companies, and state-owned companies were investigated.
- ❖ The successful enforcement activities further covered the range of administrative, civil and criminal interventions available to the Commission. Enforcement outcomes included the imposition of administrative fines, the collection of costs, the criminal prosecution and conviction for non-compliance, the declaration of delinquent directors or directors under probation, and a court order rejecting a company's claim to confidentiality of their financial statements.

Company law has a direct impact on the way both local and global business is transacted. South Africa's corporate laws are structured in a manner that seeks to support economic growth, investor confidence and foreign investment. As a result, transparency, accountability, proper corporate governance, and legal and voluntary compliance now play a pivotal role in modern business

practices. The CIPC as the custodian of the Companies Act, has a significant role to play in fostering corporate compliance and enhancing awareness among businesses of their compliance and governance obligations.

Over the last ten years the CIPC has significantly strengthened its capability to deliver an effective compliance monitoring and enforcement function. Over time these enforcement actions and initiatives even translated into innovations in relevant policy, legislation, and governance best practice. This made the CIPC into a regulatory leader that proactively contributed to enhance the credibility of the South African corporate regulatory environment as a safe and secure environment that promotes good corporate governance and protects corporate and shareholder rights.

Over the next ten years, the Commission will continue to generate enforcement momentum by researching and amending its enforcement approach to be more effective, in line with international standards, best practices, and the CIPC's Vision 2030 Strategy, to achieve a credible reputation as a world-class modern regulator, to reduce the administrative and regulatory burden for companies, to create a reputable business regulation environment that will contribute to support decision-making and boost investor confidence in South African businesses.

To overcome the challenges experienced by the two investigation units, and to improve the quality of the Commission's investigations and the efficiency of its monitoring and enforcement actions in support of its 2030 Strategy Vision, the following recommendations could be considered for future projects:

- ❖ **Recommendation 1:** Establish a follow-up process on IRBA reportable irregularities for better outcomes measurement and to strengthen stakeholder engagement.
- ❖ **Recommendation 2:** Procure an integrated and automated Case Management System that utilizes AI search, analysis, and Business Intelligence capabilities.
- ❖ **Recommendation 3:** Establish an additional Case Review Committee to meet periodically as a support platform to share approaches and best practices on investigations relating to reportable irregularities and proactive cases.
- ❖ **Recommendation 4:** Foster greater internal cooperation, coordination and information sharing between business divisions within the CIPC.
- ❖ **Recommendation 5:** Foster greater cooperation with the FRSC to allow for active advocacy and policy coordination efforts when promoting or amending financial reporting standards.
- ❖ **Recommendation 6:** Establish an in-house legal counsel or panel of legal representatives that will assist investigators with the preparation of evidence, the initiation of court procedures and for liaising with the NPA and State Attorney's office.
- ❖ **Recommendation 7:** Create an updated Investigations Procedure Manual to contain all the office processes and procedures, as well as specific guidelines on how to deal with certain cases, specific complaints, and certain legal intricacies, the relevant CIPC Notices and Practice/Guidance Notes, and the case decisions made by the Companies Tribunal.
- ❖ **Recommendation 8:** Enhance the units' training and capacity building opportunities to allow investigators to upskill periodically to perform their work more effectively.
- ❖ **Recommendation 9:** Review and benchmark the escalation process for non-compliant entities, penalties, and the determination of the quantum for administrative fines.
- ❖ **Recommendation 10:** Foster greater coordination and collaboration with the Companies Tribunal.
- ❖ **Recommendation 11:** Allow for the occasional publication of enforcement matters to report on the nature and thematic analysis of investigation cases, compliance monitoring efforts and the outcomes of enforcement processes.
- ❖ **Recommendation 12:** Streamline the case registers by separating cases based on a particular legal basis into its own case register, annotate and update all the necessary information on the registers, such as appointments, compliance notices, compliance certificates, tribunal objections, and NPA and State Attorney referrals, to assist the units to more effectively measure the impact of their enforcement actions.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACCA	Association of Chartered Certified Accountants	ISSB	International Sustainability Standards Board
ACRA	Accounting and Corporate Regulatory Authority of Singapore	ITCG	IFRS Taxonomy Consultative Group
ADR	Alternative Dispute Resolution	XBRL	Inline eXtensible Business Reporting Language
AFS	Annual Financial Statements	JSE	Johannesburg Stock Exchange
AFSRC	Annual Financial Statement Review Committee	ML/TF	Money Laundering/Terrorist Financing
AGMs	Annual General Meetings	MOI	Memorandum of Incorporation
APA	Auditing Profession Act 26 of 2005	MOU	Memorandum of Understanding
BASA	Banking Association of South Africa	NBI	National Business Initiative
BO	Beneficial Ownership	NOCLAR	Non-Compliance with Laws and Regulations
BOT	Beneficial Ownership Transparency	NPA	National Prosecuting Authority
BRR	Business Regulation and Reputation	OECD	The Organisation for Economic Cooperation and Development
CCDR	Corporate Compliance and Disclosure Regulation	OCIPE	Office of Companies and Intellectual Property Enforcement
CCRD	Consumer and Corporate Regulation Division	PAFA	Pan African Federation of Accountants
CGSE	Corporate Governance, Surveillance, and Enforcement	PAJA	Promotion of Administrative Justice Act 3 of 2000
CIPC	Companies and Intellectual Property Commission	POPIA	Protection of Personal Information Act 4 of 2013
CIPRO	Companies and Intellectual Property Registration Office	PVC	Prospectus Vetting Committee
CRF	Corporate Registers Forum	RI	Reportable Irregularity
DPP	Director of Public Prosecutions	ROMS	Regulatory Offences Case Management System
DPSA	Department of Public Service and Administration	SACRO	South African Companies Registration Office
DTIC	Department of Trade, Industry and Competition	SAIBA	The Southern African Institute for Business Accountants
ESG	Environmental, Social and Governance	SAICA	South African Institute of Chartered Accountants
ERMS	Electronic Records Management System	SAIPA	The South African Institute of Professional Accountants
FAS	Financial Accountability Supplement	SAPTO	South African Patents and Trademarks Office
FATF	Financial Action Task Force	SARS	South African Revenue Service
FIC	Financial Intelligence Centre	SBR	Standardized Business Reporting
FRSC	Financial Reporting Standards Council	SDGs	Sustainable Development Goals
FRSP	Financial Reporting Surveillance Programme	SENS	Stock Exchange News Service
FSCA	The Financial Sector Conduct Authority	SLA	Service Level Agreement
FSB	Financial Services Board	SME	Small and Medium-sized Enterprise
IASB	International Accounting Standards Board	SMME	Small, Medium and Micro Enterprise
ICT	Information and Communication Technology	SoA	Scheme of Arrangement
IESBA	International Ethics Standards Board for Accountants	SOCs	State-owned companies
IFRS	International Financial Reporting Standards	SSM	Companies Commission of Malaysia
IMF	International Monetary Fund	UNCTAD	United Nations Trade and Development
IR	Independent Review	VCC	Venture Capital Company
IRBA	Independent Regulatory Board for Auditors	XBRL	eXtensible Business Reporting Language

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PART A: BACKGROUND



1. INTRODUCTION

1.1 Corporate law reform

Since 1994 South Africa's economy and legislative framework has undergone major reform due to the new democratic dispensation and the pace of change in the global economy. The Department of Trade and Industry (now the Department of Trade, Industry and Competition) (DTIC) realized during the late 1990s that South Africa's corporate law foundations were outdated and needed to be reviewed and modernised to reflect and accommodate the changing local and global business environment. There was a need to bring the country's corporate law in line with international trends. The process to reform the company law was launched officially in July 2003.¹

With regards to enforcement, the Companies Act of 1973 was considered to invoke criminal penalties too readily when civil or administrative remedies could be more appropriate. It further did not provide an effective mechanism for enforcement against directors and senior management of large companies. The lack of recourse was partly attributable to the disincentives to litigation created by the court system and the costs of protracted litigation, which diminished the practical effectiveness of the civil and criminal sanctions and remedies contained in the law. The enforcement mechanism in place was criticized for being complex and fragmented with responsibility shared between the Department of Trade and Industry and various other bodies such as the Johannesburg Stock Exchange (JSE), the Financial Services Board (FSB) and the Director of Public Prosecutions (DPP). While the Minister of Trade and Industry was empowered to appoint inspectors and to institute civil litigation on behalf of a company, these actions were inadequately resourced and reactive, and based on shareholder complaints. One issue for review was therefore to find a balance between civil, administrative, and criminal sanctions. Another issue was to address the institutional requirements to ensure simple, effective, and consistent enforcement. There was a need for a public institution with the resources and powers to investigate and enforce the rights of shareholders and other stakeholders.²

While the continued role of criminal and civil courts in company law enforcement was not questioned, the decriminalisation of company law was considered key in ensuring more effective and credible redress. An independent and suitably empowered body was necessary to ensure compliance with the provisions of the Companies

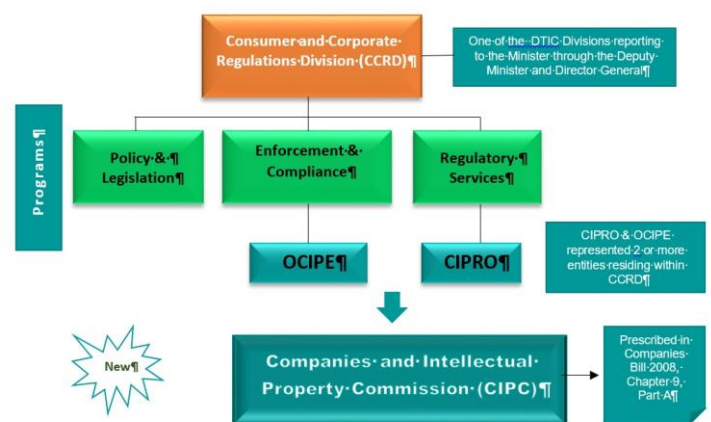
Act, and with the power to issue administrative orders and impose fines to ensure the quick resolution of some commercial matters, so that wrongdoers can be held accountable more effectively and efficiently. It was proposed that a combination of criminal, civil and administrative remedies should be introduced, and that the new institutional framework should consist of a Companies and Intellectual Property Commission, a Companies Tribunal, an Arbitration Council, and an Advisory Panel.³

The proposed Companies and Intellectual Property Commission would ensure that shareholders have recourse and redress through the effective enforcement of their rights. The intention was that the Commission will be able to act swiftly and effectively to ensure compliance, prevent wrongdoing and ensure punishment for misconduct. It was proposed that this Commission should combine the functions of the Registrar of Companies with those of an enforcement agency and be vested with all such powers as to enforce the provisions of company law and to perform market monitoring, investigation and enforcement actions, as well as the vetting and approval of prospectuses.⁴

1.2 The Companies and Intellectual Property Commission

Because of the corporate law reform process, the Companies and Intellectual Property Commission (CIPC) was formed by the amalgamation of the Companies and Intellectual Property Registration Office (CIPRO) and the Office of Companies and Intellectual Property Enforcement (OCIPE), with effect from 1 May 2011, in line with the effective date of the new Companies Act 71 of 2008.⁵

Figure A1-1: The establishment of the CIPC⁶



Both CIPRO and OCIPE operated within the Department of Trade and Industry's Consumer and

Corporate Regulation Division (CCRD). CIPRO was established as a trading entity in 2002 after the merger of the South African Companies Registration Office (SACRO) and the South African Patents and Trademarks Office (SAPTO). In 2005, the Co-operatives Unit was incorporated into CIPRO from the Department of Agriculture. OCIPE was established as a Directorate in 2005 within CCRD's Enforcement and Compliance sub-programme with a mandate to effectively and efficiently enforce company and intellectual property legislation, and thereby create a competitive and enabling economic environment that promotes economic participation and inspires investor confidence. OCIPE delivered this mandate through educational and capacity building programs, and by performing company and intellectual property investigations, managing the resolution of corporate-related complaints, and monitoring compliance with legislation.⁷

As part of the process of establishing the business case for the CIPC, the activities of OCIPE were evaluated. It was found that the monitoring and complaints function was not fully optimized, and that its services were provided primarily using a reactive approach. Potential non-compliance instances were obtained from either referrals or complaints, the majority being referrals from the Independent Regulatory Board for Auditors (IRBA). Company investigations accommodated minority protection and did not include investigations related to corporate governance and financial statements. The company investigation process was lengthy and appeared to be ineffective. The average investigation turnaround time of 24 months managed by a staff complement of 13, was attributed to the mandated approval requirements contained in the old Companies Act of 1973 which impacted on the workload. In addition, company investigation measures were not well defined, and the real outcomes of investigation findings were not always known which made it difficult to measure the impact of the activities. The ICT infrastructure was almost non-existent with pertinent enforcement information stored in stand-alone individual user desktops.⁸

A functional gap analysis reviewed several deficiencies with CIPRO and OCIPE's compliance with the new legislative requirements. Specifically, the functions required by Section 187(3) of the new Companies Act of 2008, to promote the reliability of financial statements by monitoring patterns of compliance and contraventions of financial reporting standards and making recommendations to the Financial Reporting Standards Council (FRSC), were found to be non-existent. Capabilities and capacity for this function had to be developed in terms of processes, systems, policy coordination

with the FRSC, and staff with functional competencies focusing on accounting, and forensic accounting.⁹

It was further recommended that the capacity, capability and impact of the monitoring and complaints functions should be enhanced. The CIPC should utilize more proactive monitoring processes, tools, and strategies, and formalize memoranda of understanding (MOUs) with law enforcement agencies to enhance service delivery and avoid duplication. It was proposed that the staff complement should be increased to twenty-eight and that staff should be highly skilled with analytical capabilities and competencies in forensic accounting, law, commerce, as well as international business law, to effectively perform this function. The team should be prepared to manage an increased and more intense workload with expanded responsibilities to encompass the diverse types of companies envisaged by the Companies Act of 2008, including Co-operatives and Close Corporations.¹⁰

1.3 Benchmarking for best practices

To serve as a starting point for developing the CIPC's organizational structure, a high-level desktop review of functions was conducted of the South African Competition Commission, the South African Revenue Service (SARS), the Internal Revenue Service, Securities and Exchange Commission, and Federal Trade Commission in the United States of America (USA), and the Competition Commissions of Malaysia and India.¹¹

To effectively establish the new and enhanced functions of the CIPC with regards to its enforcement powers and the promotion of the reliability of financial statements, personnel performed further benchmarking research. Since Singapore and Malaysia were regarded as having highly rated and effective company regulatory enforcement regimes, it was considered imperative that the Commission visit these regulatory bodies to benchmark on their enforcement models and their operational processes in compliance and enforcement. Over 16-20 April 2012 two CIPC officials embarked on a study tour of the Companies Commission of Malaysia (SSM) and the Accounting and Corporate Regulatory Authority (ACRA) of Singapore.¹²

The enforcement activities of the Malaysian Commission achieved an outstanding compliance rate which increased significantly from 44% in 2003 to 90% and above since 2011, proving that their balanced enforcement strategy has been well received by the business community.¹³ The Compliance Division monitors company secretaries,

convicted and bankrupted directors and companies placed under liquidation. They perform internal data inspections to monitor the submission of Annual Returns, Annual Financial Statements (AFS), and to monitor the correctness and compliance of audited financial statements. They also perform physical inspections in the form of company surprise site visits to inspect the statutory books and accounting records. The Investigation Division focuses on offences involving the public interest by sourcing cases from newspapers and electronic media, as well as financial fraud, abuse of power under the Companies Act, and financial data analysis for companies trading while insolvent. It was recommended that the CIPC should adopt a similar proactive investigation method. To expedite their prosecution cases, the SSM have seconded senior prosecutors to work with the Commission on a full-time basis to enable investigators to proceed their cases to court.¹⁴

ACRA is the national regulator of companies in Singapore. Its Financial Reporting Surveillance Programme (FRSP) samples lodged financial statements to review and enforce directors' duties under the Companies Act to prepare statements in accordance with the prescribed Accounting Standards in Singapore. This ensures that the quality of financial reporting remain on a global standard and promote confidence in investors.¹⁵ The Governance Surveillance Division sources complaints from auditor reports and can initiate prosecution of company directors. They deal with common offences such as failure to update the register of changes, unregistered entities, false declaration of annual return information, business entities managed by bankrupt directors, disqualification of directors, insubstantial shareholding reporting by listed companies, fraud, dishonesty and breaches or abuse of power. ACRA uses an automated Regulatory Offences Case Management System (ROMS) that is interfaced with the Court for prosecution. When a company defaults and is fined, the system creates a summons that is immediately transmitted to the Court to set a date. ACRA further introduced an automated colour-coded compliance rating in 2010, whereby compliant companies are given a green tick and conferred a Certificate of Compliance which expires annually, while non-compliant companies have a red cross rating. The factors for assessing the compliance rating are tracked and updated on a continuous basis, and are based on three statutory requirements, namely the timely holding of annual general meetings, the presentation of up-to-date financial statements at these meetings, and the timely filing of Annual Returns. It was recommended that the CIPC should also adopt a colour-coded rating for public and state-owned entities as it

promotes transparency to the relevant stakeholders and enables them to make informed decisions when dealing with these companies.¹⁶

The benchmarking exercise concluded that promoting education on the basic compliance provisions of legislation, tight collaboration with other professional bodies, and the focus on a more proactive rather than reactive enforcement approach, contributed to the success of the regulatory bodies in Malaysia and Singapore. These regulators also use information technology systems to their competitive advantage, such as the filing of AFS using XBRL to create, distribute and report on financial information according to the embedded accounting standards, and to facilitate the analysis of financial reports. This functionality assists investigative efforts and enforcement, and its validity checks enhance data integrity, reliability, automated mathematical calculations, and the elimination of transcriptional errors.¹⁷

1.4 Objectives, scope, and limitations of the ten-year review

This report provides a comparable, consolidated analysis of the extent and outcomes of the CIPC's corporate regulatory enforcement processes during the period under review, with a specific focus on the investigation outcomes, statistics and reporting trends concerning the Reportable Irregularities received from the accounting and auditing organizations.

The purpose of this report is to give an overview of the first decade of enforcement interventions undertaken by the Enforcement and Compliance unit of CIPC to provide a full picture of the remedial and administrative sanctions imposed since the Commission was established. The report will not only consider what has been done so far, how, when, and by who, but will also identify areas where the Enforcement and Compliance unit may improve. An analysis of the statistics will assist in identifying high or low incidences of cases, common themes, changes in industry behaviour, emerging trends, risks, and consumer education needs, as well as comparative reporting trends between IRBA and the Independent Reviewers and may inform the focus and strategy of CIPC's monitoring and regulatory enforcement activities.

The CIPC also has a mandate to enforce Intellectual Property contraventions concerning the Copyright and Counterfeit Goods Acts. The scope of this report is however limited to the CIPC's corporate regulatory compliance and enforcement activities as mandated by the Companies, Close Corporations and Co-operatives Acts, and as steered by the Corporate

Governance, Surveillance and Enforcement and the Corporate Compliance and Disclosure Regulation units.

Investigations concerning fraud and corruption-related complaints also fall outside the scope of this report. These complaints involve the unauthorised and/or fraudulent removal of directors, the misuse of clients' accounts, the fraudulent use of customer details to register a company, essential services complaints and internally reported matters concerning CIPC staff. Such cases are investigated by the Fraud Prevention unit as part of the Governance, Risk and Compliance division of the CIPC.¹⁸

In addition, the statistics on which the report is based, is further limited to the ten-year review period in accordance with the financial year of the Commission, namely from 1 April 2013 to 31 March 2023.

2. THE MANDATE, STRUCTURE AND STRATEGY OF THE COMMISSION

2.1 The mandate of the CIPC

The CIPC is a national public entity, established by the Companies Act 71 of 2008, and listed as a Schedule 3A entity in the Public Finance Management Act 1 of 2001, as amended. The Commission has a mandate to abide by the Constitution of the Republic of South Africa and its Bill of Rights. The CIPC's corporate legislative mandate allows it to register companies, business rescue practitioners and corporate names; maintain data; regulate governance of and disclosure by companies; accredit dispute resolution agents; promote education and awareness on legislative matters; give non-binding opinions and circulars, inform on policy, and provide legislative advice.¹⁹

The mandate to regulate governance of and disclosure by companies, further allows the CIPC to monitor proper compliance with and to enforce the provisions of the Companies Act 71 of 2008, the Close Corporations Act 69 of 1984, the Share Block Control Act 59 of 1980, and the Co-operatives Act 14 of 2005. The CIPC may receive or initiate complaints concerning alleged contraventions of these acts, evaluate such complaints, and initiate investigations into these complaints. It may further promote voluntary resolution of disputes between companies and directors or shareholders as contemplated in Part C of Chapter 7 of the Companies Act.²⁰

2.2 The strategic objectives and programmes of the CIPC

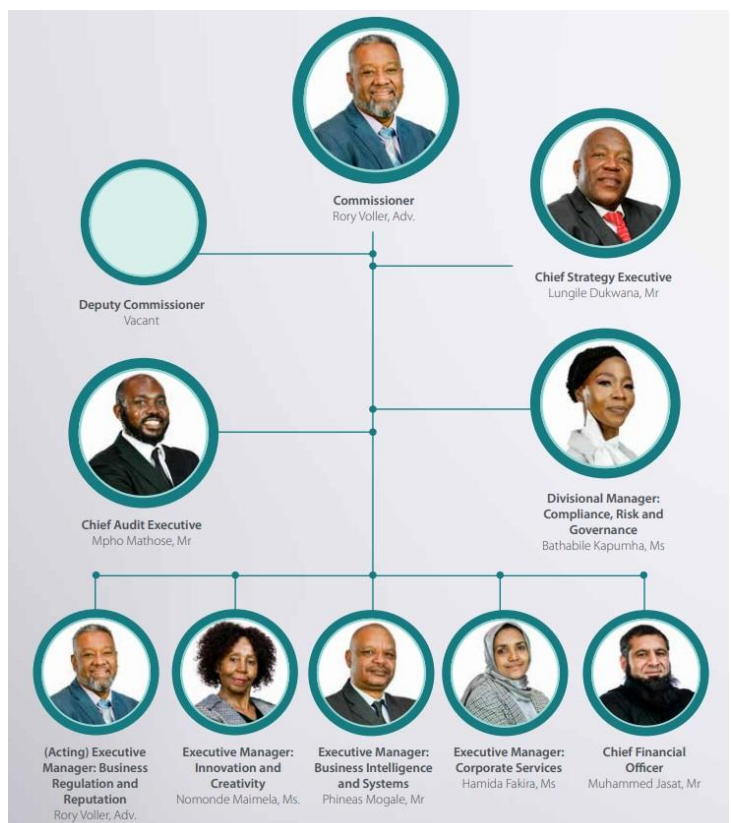
The CIPC Vision 2030 Strategy has four (4) key focus areas:

- ❖ Building competencies and capabilities required for a world-class modern regulator.
- ❖ Reducing the administrative regulatory burden to make it is easy to do business in South Africa.
- ❖ Creating a reputable Business Regulation and Intellectual Property Protection environment that contribute to boosting investor confidence in South African businesses and innovations.
- ❖ Supporting third party and CIPC's decision-making by leveraging knowledge assets and networks, extracting maximum value for the CIPC and its customers.²¹

The CIPC is divided into three (3) programmes responsible to fulfil its mandate, and to realise its strategic outcome-oriented goals, objectives, and targets:

- ❖ Programme 1: Service Delivery and Access.
- ❖ Programme 2: Innovation and Creativity.
- ❖ Programme 3: Business Regulation and Reputation.²²

Figure A1-2: : CIPC's organisational structure at executive level 2023²³



2.3 Business Regulation and Reputation programme

2.3.1 The function and purpose of the programme

The purpose of the Business Regulation and Reputation (BRR) programme is to enhance the reputation of South African businesses and the South African business environment by ensuring that the registers of corporate entities, their managers and their identity have integrity, and that a culture of corporate compliance and high standards of governance, disclosure and corporate reputation is established. The BRR programme also incorporate a focus on corporate policy and legal matters. This includes support for the prosecution of offences, interpretation of laws, and proposals for amendments to legislation and regulations. The programme aims to provide policy and legal insight and advice on the co-ordination, implementation, and impact of the respective laws. It further entails the continuous tracking of international developments in the areas of corporate governance, disclosure, corporate registration and enforcement, and the education of business owners and practitioners on compliance with legislation.²⁴

The following corporate functions, amongst others, therefore, fall within this programme:

- ❖ Maintaining registers of companies and close corporations, co-operatives, directors and delinquent persons, trademarks and company names and business names.
- ❖ Accreditation of practitioners and intermediaries.
- ❖ Educating business owners and practitioners on legislative compliance.
- ❖ Promotion and enforcement of compliance with the legislation.²⁵

2.3.2 Business units within the programme

To implement these objectives, the Business Regulation and Reputation Group is sub-divided into the following three (3) business units with their respective sub-programmes:

- ❖ Corporate Registers
 - Companies and Close Corporations
 - Co-operatives
 - Directors, Members, and Practitioners
 - Trademarks
- ❖ Education, Policy and Legal
 - Corporate Education and Voluntary Compliance
 - Corporate Legal and Policy Support
- ❖ Enforcement and Compliance

- Corporate Governance, Surveillance, and Enforcement
- Corporate Compliance and Disclosure Regulation.²⁶

2.3.3 Enforcement and Compliance

The Commission's objective in relation to enforcement, as set out in Section 186(1)(e) of the Companies Act, 2008, is to ensure that the efficient, effective and widest possible enforcement of the Companies Act, and any other legislation listed in Schedule 4, such as the Close Corporations Act, Share Block Control Act, Co-operatives Act, and the Protection of Businesses Act 99 of 1978, is effected.²⁷ The Enforcement and Compliance business unit within CIPC is thereby required to monitor compliance, investigate complaints and to enforce the provisions relating to the governance and disclosure requirements of these acts.²⁸

The unit is committed and determined to enforce, prevent, deter, and detect all forms of contraventions of the relevant legislation. The unit consists of the following two (2) sub-programmes that are collectively responsible for performing the public administrative enforcement functions of the CIPC:

- ❖ Corporate Governance, Surveillance, and Enforcement (CGSE).
- ❖ Corporate Compliance and Disclosure Regulation (CCDR).

The specific functions of the Enforcement and Compliance business units include:

- ❖ Fostering compliance with the Companies, Close Corporations and Co-operatives acts through public education and awareness campaigns, and by monitoring, and issuing compliance notices.
- ❖ Ensuring the implementation of Financial Reporting Standards.
- ❖ Vetting of prospectuses.
- ❖ Conducting investigations of Companies, Close Corporations and Co-operatives violations.
- ❖ Enforcing compliance notices.
- ❖ Promoting voluntary dispute resolution.
- ❖ Referring alleged offences to the Companies Tribunal, courts, and other regulatory agencies.²⁹

3. THE ENFORCEMENT STRATEGY OF THE COMMISSION

3.1 Public administrative enforcement strategy

South Africa has many sources that influence its regulatory framework on corporate governance such as legislation, regulation, good practice codes, the common law and the JSE listing requirements. The Companies Act converted some common law principles into legislation, while the King Report on Corporate Governance provides principle-based guidelines for good corporate governance, and further advocates for inclusive stakeholder orientation. The country's regulatory environment therefore effectively combines statutory regulation and self-regulation.³⁰

The Companies Act of 2008 decriminalized company law, and very few offences remain. Instead of criminal sanctions, the Act uses an administrative enforcement system to ensure compliance with the provisions of the Act.³¹ In particular, actual adherence with the Act is ensured and enforced by way of the investigation and complaints system, which aims to encourage adherence by granting opportunities to comply instead of through criminal liability. The compliance notice system does well in guiding persons who have never operated in the corporate sphere before while also ensuring that large and established entities also comply with the Companies Act.³²

The strategic objectives of the Enforcement and Compliance business units are to:

- ❖ Render an efficient, effective, and widest possible enforcement of the mandated acts.
- ❖ Ensure collaborative efforts to unlock all areas of the CIPC, and to include both internal and external stakeholders to be involved and to assist in reducing contraventions of the relevant acts.
- ❖ Contribute to the establishment of a zero-tolerance culture to contraventions through early detection and performing swift investigations.
- ❖ Promote an efficient and predictable regulatory presence in the enforcement of the Companies Act by establishing a credible enforcement institution with meaningful impact in the market economy.
- ❖ Maintain a stance to provide a strong deterrent for any non-compliance, and to impose the penalties provided for by the relevant legislation where offences have been identified.
- ❖ Promote the efficient deterrence of contraventions by undertaking proactive steps and risk assessment analysis.

- ❖ Encourage voluntary compliance.³³

3.2 Complaints procedure

Initiating a complaint with the Commission:

- ❖ Any person may file a complaint in writing with the Commission by completing a Form CoR 135.1, in respect of any provision of the Act and alleging that a person has acted inconsistently with the Act, or that the complainant's rights under the Act, or under a company's Memorandum of Incorporation (MOI) or rules have been infringed.
- ❖ A complaint may be initiated directly by the Commission, on its own motion or on the request of another regulatory authority.
- ❖ The Minister may direct the Commission to investigate an alleged contravention of the Act, or other specified circumstances.³⁴

3.3 Investigation procedure

The investigation of complaints is mandated in terms of the following Companies Act provisions:

- ❖ Section 209 – Appointment of inspectors.
- ❖ Section 168 – Initiating a complaint.
- ❖ Section 169 – Authority to investigate, read with Regulations 135 and 137.
- ❖ Sections 176-179 – Powers to investigate, read with Regulations 138-141.

The first phase of the investigative process, the preliminary evaluation, refers to the process of collecting and analysing information and evidence to determine whether:

- ❖ The alleged behaviour, if established, would constitute misconduct,
- ❖ The allegations are credible, material, and verifiable, and/or
- ❖ A more appropriate or less formal remedy is available, or
- ❖ The matter falls within the ambit of another body.³⁵

Upon receiving a complaint, the CIPC may resolve to:

- ❖ not investigate,
- ❖ refer it to the Companies Tribunal or an Accredited Agency or another appropriate regulatory authority, or
- ❖ direct an investigator or inspector to investigate.³⁶

The next phase of the investigation relates to a full investigation to follow-up on evidence to substantiate or refute an allegation, identify respondents, establish relevant contextual

circumstances, or to obtain sufficient evidence. The outcome of a full investigation may be recorded in an investigation report.³⁷

After receiving an investigation report, the Commission may:

- ❖ excuse a respondent,
- ❖ refer the complaint to the Companies Tribunal,
- ❖ issue a notice of non-referral to the complainant, advising the complainant of any rights to seek a remedy in court,
- ❖ commence proceedings in a court in the name of the complainant, if the complainant has a right to apply to a court; and has consented to the Commission to do so,
- ❖ refer the matter to the National Prosecuting Authority (NPA), or other regulatory authority, if the Commission alleges that a person has committed an offence in terms of the Companies Act or any other relevant legislation, or
- ❖ issue a compliance notice in terms of Section 171.³⁸

3.4 Types of contraventions

The following contraventions from the Companies Act fall within the mandate of CGSE to investigate:

- ❖ Section 22 – Reckless Trading prohibited.
- ❖ Section 26(9) – Access to company records, read with Regulation 24.
- ❖ Section 28(3) – Accounting records.
- ❖ Section 29(6) – Financial statements.
- ❖ Section 31(4) – Access to financial statements or related information.
- ❖ Section 32(5) – Use of company name and a registration number.
- ❖ Section 99 – General restrictions on offers to the public.
- ❖ Section 10, read with Section 95 – secondary offers to the public, and the application and interpretation of Chapter 4.
- ❖ Section 157 – Extended standing to apply for remedies.
- ❖ Section 165 – Derivative actions.
- ❖ Section 213(1) – Breach of confidence.
- ❖ Section 215 – Hindering administration of the Act.
- ❖ Section 218(2) – Civil actions.

The following contraventions fall specifically within the mandate of CCDD to investigate:

- ❖ Section 30 – Annual financial statements.
- ❖ Regulation 29 – Independent review of annual financial statements.
- ❖ Regulation 30 – Company annual returns.

3.5 Areas excluded from the scope of investigations

The powers of inspectors and designated investigators do not extend to those areas for which separate provisions have been made in other legislation and/or disciplines, including the following:

- ❖ workplace-related conflicts and grievances.
- ❖ criminal investigations.
- ❖ investigations of other CIPC structures, inter alia: Group Risk, Compliance and Governance Fraud and reported Whistleblowers.
- ❖ enforcement under the Counterfeit Goods and Copyright Acts.
- ❖ other agencies within the DTIC group entrusted with the investigation of companies from their legislative perspectives, for example, the Competition Commission, the NCC, B-BBEE Commission, and the CCMA.
- ❖ general enquiries of process issues relating to CIPC systems.
- ❖ general enquiries for other business units within CIPC.³⁹

3.6 Offences

Offences under the Companies Act comprise contraventions of the following:

- ❖ Section 26(9) – refusing access to records.
- ❖ Section 28(3) – failure to keep accurate or complete accounting records, or falsification of a company's accounting records.
- ❖ Section 29(6) – preparing, approving, disseminating, or publishing any financial statements knowing that those statements fail in a material way to comply with the requirements or are materially false or misleading.
- ❖ Section 31(4) – refusing inspection or copying of records.
- ❖ Section 32(1) – misstating a company's name or registration number in a manner likely to mislead or deceive any person, or not including the name or registration number in official publications.
- ❖ Section 213 – breach of confidence.
- ❖ Section 214 – false statements, reckless conduct, and non-compliance.
- ❖ Section 215 – hindering administration of Act.

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3.7 Penalties and Administrative Fines

According to Sections 216 and 217 of the Companies Act, a Magistrate's Court has authority to impose the following penalties for any person convicted of an offence in terms of the Companies Act:

- ❖ For a contravention of Section 213(1) or 214(1), a fine or imprisonment for a period not exceeding 10 years, or both a fine and imprisonment.
- ❖ For any other case, a fine or imprisonment for a period not exceeding 12 months, or both a fine and imprisonment.⁴¹

According to Section 175(1), a court may, on application by the Commission, impose an administrative fine for failure to comply with a compliance notice, as contemplated in Section 171(7). The fine must be paid into the National Revenue Fund and cannot exceed the greater of 10 percent of the respondent's turnover for the period during which the company failed to comply with the compliance notice, or the maximum prescribed amount of R1 000 000.⁴²

According to Section 175(2), when determining the amount of an appropriate administrative fine, the following factors must be considered:

- ❖ the nature, duration, gravity, and extent of the contravention;
- ❖ any loss or damage suffered because of the contravention;
- ❖ the behaviour of the respondent;
- ❖ the market circumstances in which the contravention took place;
- ❖ the level of profit derived from the contravention;
- ❖ the degree to which the respondent has co-operated with the Commission and the court, and
- ❖ whether the respondent has previously been found in contravention of the Companies Act.⁴³

3.8 Referral of complaints to other regulatory authorities

The Commission may refer any concerns regarding behaviour or conduct that may be prohibited or regulated to:

- ❖ the Competition Commission in terms of the Competition Act 89 of 1998;
- ❖ the South Africa Revenue Service in terms of legislation within the authority of that Service;
- ❖ the Independent Regulatory Board for Auditors in terms of the Auditing Profession Act 26 of 2005; or
- ❖ any other regulatory authority in terms of legislation within the authority of that regulatory authority.⁴⁴

3.9 Review by the Companies Tribunal

Compliance notices should be issued in a fair and just manner. Since the issuing of a compliance notice is at the discretion of the regulator, it is classified as an administrative action, and must therefore meet the requirements of lawfulness, reasonableness, and procedural fairness as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with the Promotion of Administrative Justice Act 3 of 2000 (PAJA).⁴⁵

A person issued with a compliance notice by the CIPC may in terms of Section 172 of the Companies Act, apply to the Companies Tribunal for a review of such a notice, within 15 days of receiving the notice or within such longer time allowed by the Tribunal on good cause shown by the applicant. After considering an application and any other relevant information, the Companies Tribunal may confirm, modify, or cancel all or part of a compliance notice. A decision by the Companies Tribunal is binding on the CIPC subject to the right of review or appeal to court.⁴⁶

As shown in **Figure A1-3**, from the sample of 18 cases where compliance notices were issued and taken before the Companies Tribunal on review, 50% were dismissed by the Tribunal, which indicates that the Tribunal agreed with the CIPC investigator's decision and the terms of the compliance notice. From those review applications that were granted, the majority (39%) agreed with the merit of the CIPC investigation but merely granted an extension of time to comply with the notice or otherwise modified the terms of the notice, for example with regards to the documents that had to be submitted. Only 11% of the granted cases on review, disagreed with the way the CIPC investigation were handled or the reasons for the decision of the investigator. This indicates that the CIPC's corporate investigations are overall of a high standard and hold up to legal scrutiny and judicial review.

These examples refer mainly to cases where Compliance Notices were issued by CCDD and CGSE investigators for non-compliance, and then taken to the Companies Tribunal on review. Cases taken on review in respect of notices of non-investigation, the granting or refusal of confidentiality claims, and issues regarding compliance certificates, were excluded from the sample.

Figure A1-3: Comparison of the percentage of CIPC Compliance Notice review applications granted and dismissed by the Companies Tribunal

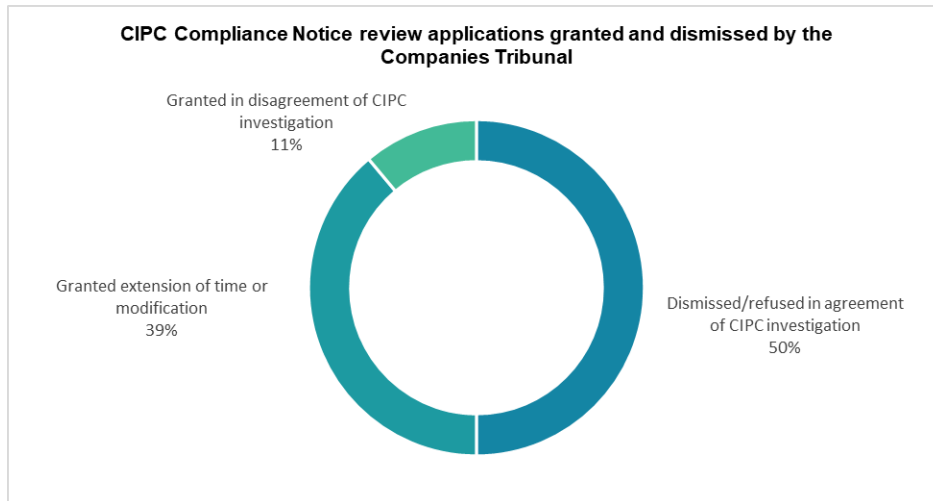


Table A1-1: Examples of CIPC Compliance Notices taken on review to the Companies Tribunal

CIPC Case No	Compliance Notice Date	Company	Tribunal Case Number	Application to	Date of decision	CIPC Unit	Decision Status
CCDR239/2014	14/01/2015	LGI PROPERTIES EMERALD (SA) LIMITED	CT008MAR2015	Review	13/04/2015	CCDR	Dismissed
CCDR166/2014	24/02/2015	FARMSECURE GRAINS (PTY) LTD	CT012MAR2015	Set aside	18/05/2015	CCDR	Granted extension
G103(2014)	03/07/2015	AIRPORT INTERNATIONALE SA		Review		CGSE	Dismissed
CCDR289/2015	17/12/2015	PORTFOLIO PHARMACEUTICALS (PTY) LTD	CT018FEB2016	Review or modify	31/08/2016	CCDR	Granted modification
CCDR159/2016	25/01/2017	BELGACOM INTERNATIONAL CARRIER SERVICES SOUTH AFRICA (PTY) LTD	CT001JUN2019	Set aside	10/10/2019	CCDR	Dismissed
CCDR269/2015	25/01/2017	FARMSECURE FRUIT (PTY) LTD	CT003FEB2017	Withdraw or modify	02/05/2017	CCDR	Granted extension
CCDR104/2016	15/02/2017	WELFIT ODDY INDUSTRIES (PTY) LTD.	CT008APRIL2017	Cancel	17/07/2017	CCDR	Granted
CCDR102/2016	15/02/2017	WELFIT ODDY (PTY) LTD	CT012APRIL2017	Cancel	21/07/2017	CCDR	Granted
CCDR193/2018		HOEKSTEEN PROJECTS (PTY) LTD	CT017Nov2018	Extend time	03/12/2018	CCDR	Refused
	04/02/2021	ATTACQ LIMITED	CT00682ADJ2021	Set aside	12/07/2021	CCDR	Dismissed
CCDR076/2019	09/05/2021	MOGS INTERNATIONAL (PTY) LTD	CT00712ADJ2021	Modify	22/10/2021	CCDR	Granted extension
CCDR032/2021	30/07/2021	YOUNG WOMEN IN BUSINESS NETWORK (YWBN)	CT00806ADJ2021	Set aside or modify	14/09/2021	CCDR	Refused
CCDR054/2021 & CCDR055/2021	21/09/2021	CIPLA MEDPRO SOUTH AFRICA (PTY) LTD & MEDPRO PHARMACEUTICA (PTY) LTD	CT00829ADJ2021	Set aside	31/03/2022	CCDR	Dismissed
	06/12/2021	SWISS RE CORPORATE SOLUTIONS AFRICA LTD	CT00889/ADJ/2022	Modify or cancel	28/03/2022		Granted extension of time and modified
CCDR103/2020	07/12/2021	SOUTH AFRICAN POST OFFICE SOC LIMITED	CT00941ADJ2022	Extend time	08/03/2022	CCDR	Granted extension
G246(2021)	14/07/2022	THE DAILY GRIND INNOVATION HUB NPC	CT101115ADJ2022	Cancel	24/04/2023	CGSE	Dismissed
CCDR053/2020	12/09/2022	PEMBURY LIFESTYLE GROUP LIMITED	CT01335ADJ2023	Extend time	30/05/2023	CCDR	Granted extension
G364(2022)	02/03/2023	THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC	CT01399ADJ2023	Set aside	29/11/2023	CGSE	Dismissed

PART B: COMPLIANCE AND ENFORCEMENT STATISTICS



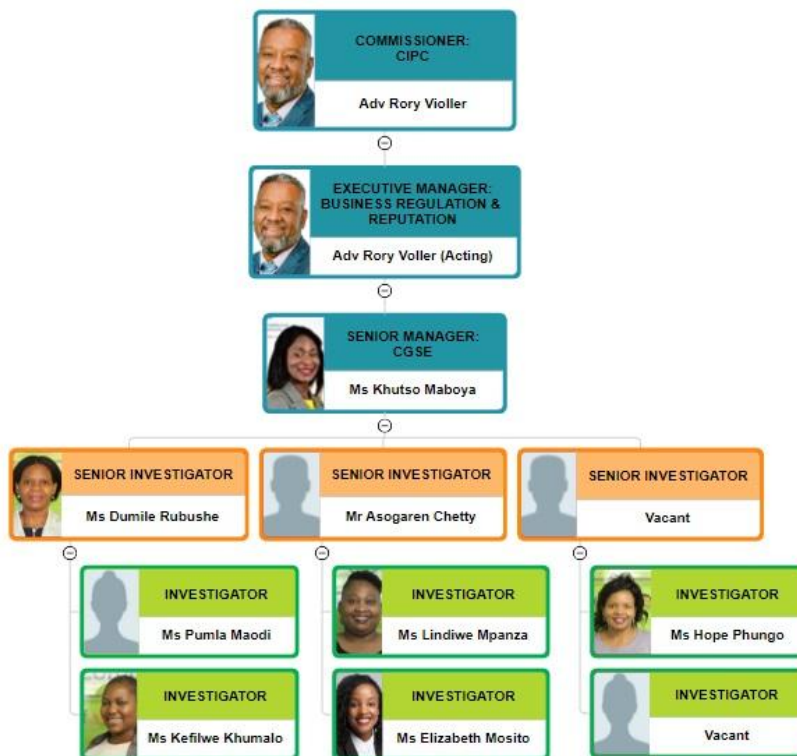
4. CORPORATE GOVERNANCE, SURVEILLANCE AND ENFORCEMENT

4.1 Background and structure

Most of the personnel from the Corporate Governance, Surveillance and Enforcement unit (CGSE) were part of the business unit that originally merged to CIPC from OCIFE.⁴⁷ When the new

structure of the CIPC was approved in 2013, and the unit was established from October 2013 onwards as a separate unit, it consisted of one Senior Manager (*Ms Lana van Zyl*), three Senior Investigators (*Ms Dumile Rubushe*, *Mr Asogaren Chetty*, *Mr Nkululeko Norman*), two Investigators (*Ms Kefilwe Khumalo*, *Ms Unati Motau*) and four vacant Investigator positions,⁴⁸ which were subsequently filled (*Ms Pumla Maodi*, *Ms Lindiwe Mpanza*, *Ms Hope Phungo*, *Adv Leslie Davids*).

Figure B4-1: The structure of the CGSE unit during March 2024



4.2 Functions

The objectives of the unit are to ensure the efficient, effective, and widest possible enforcement of the Companies Act and any other legislation listed in Schedule 4 of the Act.⁴⁹

The categories of enforcement under CGSE are divided into two (2) main activities, namely:

- ❖ Alternative Dispute Resolution (ADR).
- ❖ Investigation of complaints.

The main activities of the unit are as follows:

- ❖ The Surveillance function entails a proactive review process on adherence to governance and the Companies Act.
- ❖ The Enforcement function focus on proactive and reactive assessment of compliance to the

Companies Act through investigations and prosecution.

- ❖ Accreditation of agencies for ADR.⁵⁰

ADR is primarily a Companies Tribunal function. In terms of Section 169(1)(b) of the Companies Act, the Commission may, if considered expedient as a means of resolving the matter, refer the complainant to the Companies Tribunal, or to an accredited entity as defined in Section 166(3), with a recommendation that the complainant seek to resolve the matter with the assistance of that agency or person. Dispute resolution may result in a consent order, and if the parties to the dispute consent to that order, it is submitted to court to be confirmed in terms of its rules.⁵¹

CIPC's strategic objectives for providing ADR as an alternative, voluntary, cost and time effective government business service, are to:

- ❖ Render the efficient, effective, and widest possible resolution of disputes involving directors, shareholders, or employees within companies.
- ❖ Reduce cases concerning issues of disputes in companies pertaining to the administration of the Companies Act.
- ❖ Promote regulatory presence and influence voluntary compliance.⁵²

During **2014/15**, CIPC drafted accreditation requirements for an accredited entity to facilitate access to professional redress in terms of Section 166 of the Companies Act. According to Section 166(1)(b), as an alternative to applying for relief to a court, or filing a complaint with the CIPC, a person who would be entitled to apply for relief, or file a complaint for resolution by mediation, conciliation or arbitration to an accredited entity, may refer a matter that could be the subject of such an application to an accredited entity as defined in Section 166(3). A letter was sent to the Minister of Trade and Industry with the draft accreditation requirements and proposed criteria for his consideration.⁵³

4.3 Investigations between May 2011 and March 2013

Table B4-1: Investigations between May 2011 and March 2013⁵⁴

	2011/2012	2012/2013
Cases brought forward	9	48
Complaints received	102	583
Total cases investigated	11	631
Cases finalized (percentage of total cases investigated)	63 (57%)	357 (57%)
Cases pending as at financial year-end	48	274
Compliance notices issued	1	1
Compliance certificates	0	1

Since the inception of the CIPC and the implementation of the 2008 Companies Act in May 2011, the CIPC has received 694 complaints including 9 cases carried over from the previous Companies Act, 1973. By the end of March 2013, 420 cases have been finalized while 274 were pending. Most of these cases related to unauthorized director changes, reported irregularities from IRBA and internal company disputes.⁵⁵

4.4 Trends analysis for CGSE investigations between April 2013 and March 2023

4.4.1 Statistics of complaints investigated by CGSE

For the statistics of CGSE for **2013/14**, the matters received from IRBA were removed and added to the statistical table for the Reportable Irregularities reported by IRBA (see **Table B6-5**). The 251 cases received for 2013/14 therefore relate solely to the other complaints received by CGSE.

During **2014/15**, determinations to close or refer matters to another regulatory authority, or to be directed in terms of the Act to investigate the matter, were made at an average of 17 working days, and more than 85% of these were processed within the service delivery standard of 30 working days.⁵⁶ Due to the fact that investigations for most of these cases were dependent on issues outside the control of the CIPC investigators, many took long to finalise. While some cases were more complex than others, several external dependencies existed that often hampered investigations, such as slow responses from both complainants and respondents.⁵⁷

The reasons for closing matters usually include the following:

- ❖ Inspectors appointed to investigate.
- ❖ Companies under Business Rescue.
- ❖ Complainant still a director and/or member.
- ❖ Allegations not substantiated.
- ❖ Not in mandate.
- ❖ No contravention of Act.
- ❖ Referred to Tribunal.
- ❖ Complaint withdrawn.
- ❖ Fronting matters referred.
- ❖ Referred to other units in CIPC.⁵⁸

4.4.2 Number of complaints received by CGSE

As can be seen from **Figure B4-2** and **Figure B4-4**, the number of complaints received by CGSE fluctuated over the ten years under review.

From **Figure B4-2** and **Figure B4-5** it can be deduced that the complaints received over 2013/14 and 2020-2022 were closed at a lower rate than for the other years. The **2013/14** low closure rate could be explained due to the unit being new and experiencing staff vacancies as well as still establishing its official processes and work flows to guide investigators in their cases. The low closure rate over **2020/21** and **2021/22** could be attributed to the significantly higher volumes of

complaints received for those years. The unit also experienced staff shortages over that period, with its Senior Manager retiring. Her position was only filled in 2022. Those were also the years that

coincided with the lockdown restrictions due to the Covid-19 pandemic, and staff as well as companies were still adapting to the remote working conditions.

Table B4-2: Total statistics for cases received by CGSE from April 2013 to March 2023

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
Received	251	126	151	228	231	125	184	288	452	247	2283
Total closed over 2013-2023	162	126	151	228	231	125	182	240	290	211	1946
Closed during each year	152	123	151	204	259	129	183	228	305	212	1946
Pending	89						2	48	162	36	337
Closure not indicated	89						2	48	162	21	322
Closed 2013/14	152										152
Closed 2014/15	10	113									123
Closed 2015/16		13	138								151
Closed 2016/17			13	191							204
Closed 2017/18				34	225						259
Closed 2018/19				3	6	120					129
Closed 2019/20						5	178				183
Closed 2020/21							4	224			228
Closed 2021/22								16	289		305
Closed 2022/23									1	211	212
Closed 2023/24										15	15
Compliance Notices		1	2	2	7	4		13	4	15	48
Compliance Certificates				2	2	2		1			7
Notice to Investigate CoR137.1		40	28	61	28	39	91	68	27	85	467
Notice Non-Investigation CoR135.2				2	53	20	21	49	69	114	328
Referred to State Attorney					2		2	10			14

Figure B4-2: Comparison of the number of complaints received by CGSE, closed and the number of Compliance Notices issued

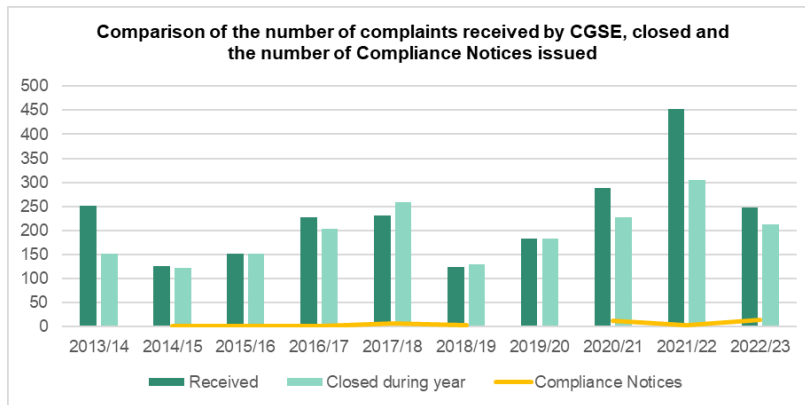


Figure B4-3: Comparison between the total percentage of CGSE complaints closed and those that are still pending between April 2013 to March 2023

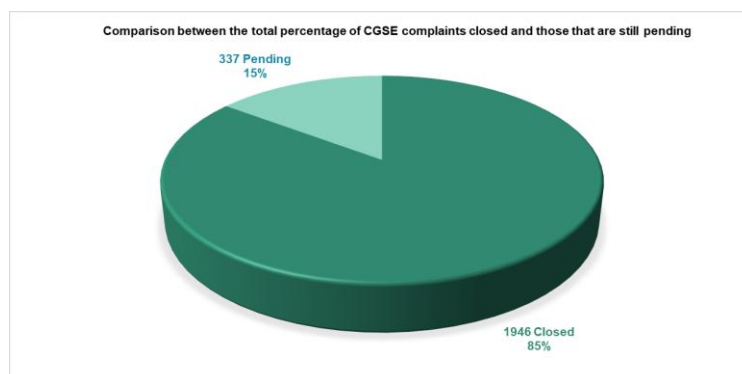


Figure B4-4: Comparison of the number of CGSE complaints received and closed between April 2013 to March 2023

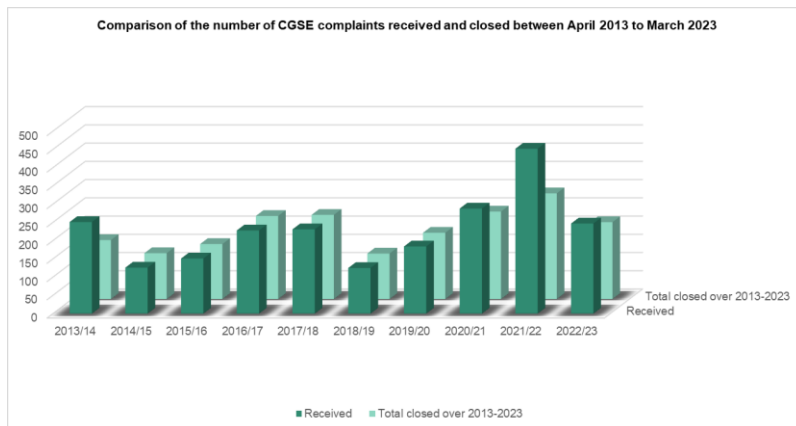
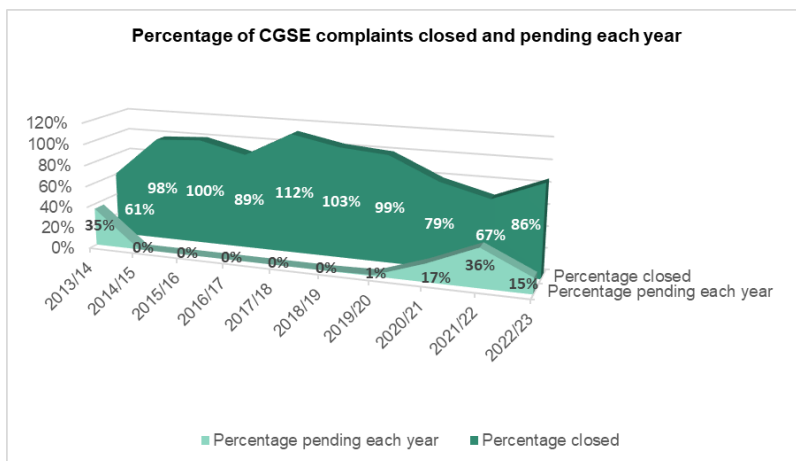


Figure B4-5: Comparison between the total percentages of CGSE complaints closed and pending for each particular year

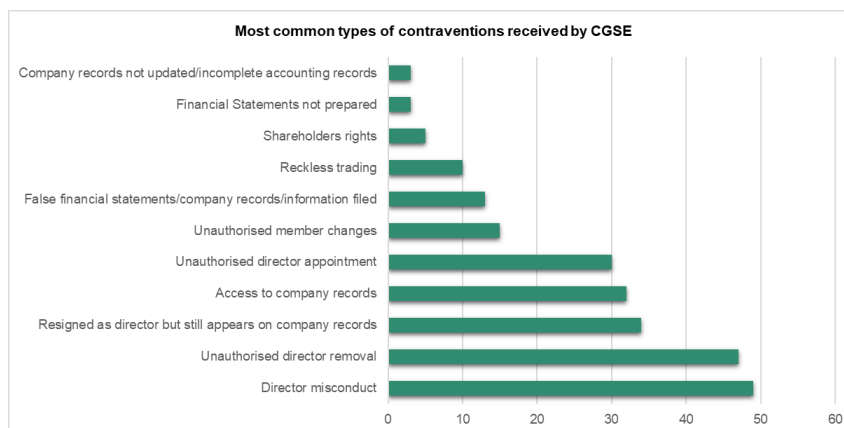


4.4.3 Types of contraventions received by CGSE

As can be observed from **Figure B4-6**, directors' misconduct, unauthorised removal of a director, resignation as director but still appearing on company records, unauthorised access to company

records and unauthorised appointments of a director, constituted the most common types of complaints or contraventions received by CGSE during **2022/23**.⁵⁹

Figure B4-6: The most common types of contraventions received by CGSE during 2022/23



4.4.4 Proactive SEC drive

During the **2017/18** financial year, CGSE monitored compliance with Regulations 43(4) and (5) relating to the functions that a Social and Ethics Committee (SEC) should exercise, as well as the companies' compliance with relevant legislation and their contribution to the development of the communities in which their activities are conducted. A review of the responses received confirmed substantial compliance by the companies that were approached for information.⁶⁰

The CGSE unit however decided to also proactively follow up on applications that were filed with the Companies Tribunal for companies that requested exemption from establishing Social and Ethics Committees. During December 2017, the unit observed the decisions of the Companies Tribunal in this regard and approached four (4) applicants where the Tribunal had refused their request to be exempted. CGSE received responses from two (2) companies who had not yet complied with the establishment of a Social and Ethics Committee, and they provided legitimate reasons. The other two (2) companies confirmed that they have established Social and Ethics Committees, but clarity was still outstanding regarding the identities of the directors who have not been involved in the day-to-day management of the companies' business as well as proof thereof.⁶¹

During **2018/19**, a total of 11 (eleven) companies were approached where the Companies Tribunal refused their requests to be exempted from the SEC requirements. They were requested to report and provide proof that a SEC has been established, or to provide substantive reasons where a SEC has not been established. The companies were made aware of the contents of Sections 84(6) and (7) of the Companies Act, and Regulation 44 of the Companies Regulations. CGSE received positive responses from ten (10) of the companies, while one (1) company could not be reached due to a lack of contact details on the system.⁶²

5. CORPORATE COMPLIANCE AND DISCLOSURE REGULATION

5.1 Background and structure

The Corporate Compliance and Disclosure Regulation (CCDR) unit was established on 1 July 2013 as a new unit within the Compliance and Enforcement division to monitor compliance with the disclosure requirements of the Companies Act. It

formally commenced as a fully-fledged unit in August 2013 with five officials, including a Senior Manager (*Mr Joey Mathekga*), four Senior Investigators (*Ms Khutso Maboya*, *Mr Samkelo Mzileni*, *Ms Elaine Kalappen*, *Mr Gideon Schutte*), and one Investigator (*Mr Christo Pretorius*). The unit was formally capacitated from the middle of 2014 onwards with the appointment of seven more Investigators⁶³ (*Ms Thendo Sikhware*, *Mr Benjamin Sebotsa*, *Mr Dakalo Matamela*, *Mr Sthembiso Machimane*, *Mr Lecler Thekiso*, *Adv Thikhathali Mulaudzi*, *Mr Cuma Zwane*).

The CCDR unit benchmarked its new functions that had to be implemented, especially for the AFS Stream, against established practices used by the JSE, IRBA, the FSB (now the Financial Sector Conduct Authority - FSCA), National Treasury, ACRA in Singapore and the Malaysian SSM.⁶⁴ In addition, three (3) team members of CCDR undertook a study tour in May 2014 to visit the Australian Investments and Securities Commission, and the Financial Markets Authority in New Zealand.⁶⁵ The unit subsequently established a disclosure framework, disclosure process and guidelines to ensure that standards and norms are adhered to.⁶⁶

5.2 Functions

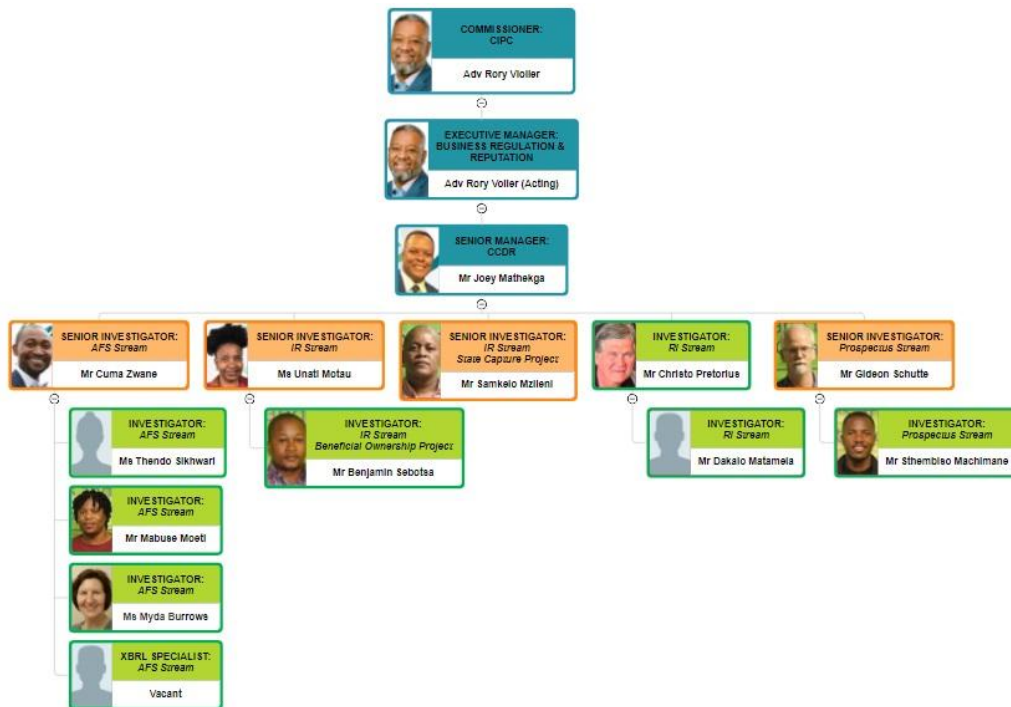
The unit is responsible for the investigation and enforcement of compliance with regards to corporate financial disclosure, thereby promoting corporate transparency and high standards of corporate governance. The unit is divided into the following four functional areas or streams:

- ❖ Monitoring, review, and analysis of Annual Financial Statements for compliance with International Financial Reporting Standards (IFRS) and the provisions of the Companies Act.
- ❖ Investigating Reportable Irregularities received from Independent Reviewers.
- ❖ Investigating Reportable Irregularities received from the Independent Regulatory Board of Auditors (IRBA).
- ❖ Review and Registration of Prospectuses, Rights Offers, Employee Share Schemes, and Letters of Allocation.⁶⁷

5.3 The Annual Financial Statements stream

The mandate of the Annual Financial Statements (AFS) stream arises from Sections 29 and 30 of the Companies Act, read with Companies Regulations 27 and 30(5).⁶⁸

Figure B5-1: The structure of the CCDR unit during March 2024



The AFS stream is thereby authorized:

- ❖ To review a sample of audited and/or independently reviewed financial statements, or financial accountability supplements (FAS) with the objective of monitoring compliance with the financial record keeping and financial reporting provisions of the Companies Act.
- ❖ To monitor whether the corporate entity's AFS comply with the disclosure provisions of the Act.
- ❖ To issue correspondence to the entity in the form of queries relating to the findings of the financial statement review analysis, for further information and comments.
- ❖ To issue a compliance notice to any entity where there is non-compliance to require them to correct and improve compliance with the financial record keeping, financial reporting provisions and the requirements of the Act.⁶⁹

The CIPC is required by Section 187(3) of the Companies Act to promote the reliability of financial statements by monitoring patterns of compliance with, and contraventions of, financial reporting standards and making recommendations to the FRSC for amendments to the financial reporting standards. To fulfil its mandate to monitor compliance with the IFRS, the CIPC established a system during April 2014, in the form of the Annual Financial Statement Review Committee (AFSRC), to select and review a quarterly sample of filed AFS and/or FAS according to selected industry, threshold

and/or other trending criteria. The review analysis addresses both general compliance with the Companies Act, the IFRS and the King Code, and an evaluation of the solvency and liquidity of the sampled companies.⁷⁰

5.4. The Independent Review stream

5.4.1 Stream structure

With the commencement of the 2008 Companies Act, new provisions for the independent review of AFS were included. Section 30 provides for a profit or non-profit company to be independently reviewed in a manner that satisfies the provisions of Regulation 29. Not all companies qualify to be independently reviewed however, and the Act provides specific requirements with regards to the entities that do qualify for an independent review. Regulation 29 sets out the details of all information relative and incidental to independent reviews, such as the role and functions of the CIPC and the accounting officers with regards to the reporting of reportable irregularities, the qualification requirement to exercise an independent review, the applicable entities, and the duties and responsibilities of the professional bodies whose members are engaged with independent reviews.⁷¹

The Independent Review (IR) stream was established to implement the provisions of Regulation 29. The stream consisted initially of a

Senior Investigator (*Ms Elaine Kalappen*) and two Investigators (*Adv Thikhathali Mulaudzi, Mr Benjamin Sebotsa*) The stream is primarily tasked with the strategic and functional aspects of the independent review process, such as the drafting of process flows, notices, procedural guidelines, and general correspondences, and the coordination, preparation and planning of workshops, meetings, and other stakeholder engagements. The full contingent of the CCDR unit, however, participate in the operational aspects of IR, which includes the investigation and or speedy resolution of IR reports received by the unit.⁷²

5.4.2 Reportable irregularities in terms of Regulation 29

Regulation 29(1)(b) defines a "reportable irregularity" as any act or omission committed by any person responsible for the management of a company, and which:

- ❖ may either have unlawfully caused or is likely to cause material financial loss to the company or to any member, shareholder, creditor, or investor of the company in respect of his/her/its dealings with that entity;
- ❖ is fraudulent or amounts to theft; or
- ❖ causes or has caused the company to trade under insolvent circumstances.⁷³

An independent review (IR) is an alternate assurance engagement providing a limited assurance on a set of AFS as opposed to the reasonable assurance or audit provided by an auditor.⁷⁴ Since an IR is less rigorous, simpler and have less requirements than an audit, it was envisaged that it would be more cost effective, more convenient and less burdensome for certain entities. The aim was to promote entrepreneurship by providing an option whereby small and medium-sized enterprises (SMME's) could lower their regulatory burden to ensure affordability and sustainability.⁷⁵

An independent reviewer refers to a person who has been appointed to perform an independent review of a company's AFS:

- ❖ For a company with a public interest score of at least 100, the independent review must be conducted by a registered auditor, or a member in good standing of a professional body that has been accredited in terms of Section 33 of the Auditing Profession Act 26 of 2005.
- ❖ For a company with a public interest score of less than 100, the independent review can also be carried out by a person who is qualified to be appointed as an accounting officer of a close

corporation in terms of Sections 60(1), (2) and (4) of the Close Corporations Act, 1984.⁷⁶

Legal opinion has confirmed that "members in good standing" refer to members with no outstanding membership fees or any pending disciplinary proceedings. The South African Institute of Chartered Accountants (SAICA) is accredited as a professional body in terms of Section 33 of the Auditing Profession Act, and therefore a Chartered Accountant (CA(SA)) as well as an Associate General Accountant (AGA(SA)) is permitted to perform independent reviews.⁷⁷

The following professional bodies govern and administer independent reviewers, and are specifically recognized under Section 60 of the Close Corporations Act:

- ❖ South African Institute of Chartered Accountants (SAICA).
- ❖ South African Institute of Professional Accountants (SAIPA).
- ❖ South African Institute of Business Accountants (SAIBA).
- ❖ Association of Chartered Certified Accountants (ACCA).
- ❖ Chartered Institute of Management Accountants (CIMA).
- ❖ South African Institute of Government Auditors (SAIGA) (Not exercising IR currently).
- ❖ Institute of Accounting and Commerce (IAC).
- ❖ Chartered Governance Institute of Southern Africa (CGISA).
- ❖ Independent Regulatory Board for Auditors (IRBA).⁷⁸

5.4.3 The independent review reporting process

The process to be followed by an independent reviewer to report a reportable irregularity to the Commission, is prescribed by Regulations 29(6)-(8):

- ❖ Upon reviewing the AFS of a company, an independent review practitioner that is satisfied or has reason to believe that a reportable irregularity has or is taking place, must send a first written report to the CIPC without delay. The report must include:
 - particulars of the reportable irregularity, including the section of the Act that is allegedly contravened, and
 - such other information and particulars as the independent reviewer may consider appropriate.
- ❖ Within three (3) business days of sending the report to CIPC, the independent reviewer must notify the members of the entity's board in writing of the submission of the report and the

provisions of Regulation 29. This notice must be accompanied by a copy of the actual report submitted to CIPC.

- ❖ As soon as reasonably possible but no later than 20 business days after sending the first report to CIPC, the independent reviewer must take all reasonable measures to discuss the reportable irregularity with the members of the board and afford the board an opportunity to make representations in respect of the report.
- ❖ The independent reviewer is thereafter required to follow up by sending a second report to the CIPC. The second report should include:
 - a statement that the independent reviewer is of the opinion that either no reportable irregularity has taken place or is taking place, or that the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant, or that the reportable irregularity is continuing;
 - detailed particulars and information supporting the statement made;
 - proof of communication to the management of the company; and
 - the contact details of a reference person for the company.
- ❖ The CIPC created a dedicated email address, namely: Independentreview@cipc.co.za, for the purpose of receiving these reports.⁷⁹

The process to be followed by the CCDD unit upon receiving the reportable irregularity from an independent review practitioner, is prescribed by Regulation 29(9):

- ❖ Upon receiving the second report from the independent reviewer stating that the reportable irregularity is continuing, a dedicated official within the Independent Review Stream records the reportable irregularity in the Independent Review Case Register with a case number.
- ❖ The official sends an acknowledgement by email to the practitioner who reported the irregularity and allocate the case to a CCDD investigator.
- ❖ Upon assessing the reports from the independent reviewer, the investigator may either refer the matter and a copy of the reports to any appropriate regulator in writing, or else may further investigate the alleged contravention of the Act.
- ❖ Should the investigator find that the directors or members of the entity failed to adequately address the contraventions and/or failed to comply with the provisions of the Act, the investigator may issue a compliance notice in the prescribed form CoR139.1 to the entity requiring the directors to cease, correct, or reverse any action in contravention of the Act,

and/or to take any other steps reasonably related to the contravention and designed to rectify its effect.⁸⁰

5.4.4 Annual reports from accounting organizations in terms of Regulation 29(12)

The IR stream also receives the annual reports that recognized accounting organizations whose members are entitled to perform an independent review, must file with the Commission according to Regulation 29(12). In this report the organization must demonstrate that inter alia it has:

- ❖ proper mechanisms for ensuring that its members participate in continued professional development and achievement of professional competence;
- ❖ mechanisms to ensure that its members are disciplined where appropriate;
- ❖ it is, and is likely to continue to be, financially and operationally viable for the near future;
- ❖ it keeps and maintains a proper register of its members; and
- ❖ it has appropriate programmes and structures in place to ensure that it is actively endeavouring to achieve the representativity of all sectors of the South African population.⁸¹

During **2021/22**, the Commission issued certificates of compliance to accounting organizations for having complied with Regulation 29(12) of the Companies Act.⁸²

5.4.5 Reports from accounting officers of Close Corporations

The IR stream further receives and administers the reports received from the accounting officers of Close Corporations. Under Section 62(3) of the Close Corporations Act, accounting officers have a statutory duty to report to the Commission if:

- ❖ they know, or has reason to believe, that the corporation is not carrying on business or is not in operation and has no intention of resuming operations soon; or
- ❖ if they find during the performance of their duties that:
 - any change in respect of any particulars mentioned in the relevant founding statement has not been registered; or
 - that the AFS indicate that as at the end of the financial year concerned the corporation's liabilities exceed its assets; or
 - that the AFS incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its

liabilities or has reason to believe that such an incorrect indication is given.⁸³

If the accounting officer has reported any of the above to the Commission and then find that any subsequent financial statements of the corporation concerned indicate that the situation has changed or has been rectified and that the assets concerned then exceed the liabilities or that they no longer incorrectly indicate that the assets exceed the liabilities or that he/she no longer has reason to believe that such an incorrect indication is given, he/she may report to the Registrar accordingly.⁸⁴

5.4.6 NOCLAR reports

The IR Stream also receives complaints relating to Non-Compliance with Laws and Regulations (NOCLAR). A NOCLAR comprises acts of omission or commission, intentional or unintentional, committed by an entity or by those charged with governance or management of the entity, or by any other individual under the direction of the entity, and which are contrary to the prevailing laws and regulations. These complaints refer to a pronouncement made in the International Ethics Standards Board for Accountants' (IESBA) Code of Ethics for Professional Accountants, and that has been subsequently included in both the IRBA and SAICA Codes of Professional Conduct, effective from 15 July 2017, for dealing with any non-compliance noticed in, for example a compilation or other engagements, by any accounting or auditing professional. The NOCLAR response framework includes a discussion with management as well as a consideration to disclose the matter to an appropriate authority such as the CIPC.⁸⁵

Where an independent review reportable irregularity must be reported to the CIPC, an accounting professional who identifies a NOCLAR has a discretion to report the matter to a regulatory authority. NOCLAR covers violation of all laws and regulations that directly affect the client's or the employing organization's financial statements or its business in a material or fundamental way, including public health and safety and environmental protection. As an international ethics standard with key public interest concerns, the NOCLAR framework has a wide reach to assist in preventing financial fraud, money laundering, and corruption.⁸⁶

5.5 The Reportable Irregularities stream

5.5.1 Stream function and structure

The introduction of the Auditing Profession Act, No 26 of 2005 (APA), had the overall aim of reducing white-collar crime by broadening the obligation of auditors to report irregularities by their clients.⁸⁷ By reporting such irregularities as part of their independent and objective assessment of a company's financial position and operations, auditors help to ensure that companies are accountable, transparent and responsive to stakeholders' needs.⁸⁸ Under Section 45(1) of the APA, a registered auditor is obligated to send a written report to IRBA about any reportable auditing irregularities picked up during an auditing engagement with a client.⁸⁹ On receiving a report stating that the irregularity is continuing, IRBA notifies the appropriate regulator/s in writing of the details of the reportable irregularity, including a copy of the report.⁹⁰ In the case of reportable irregularities related to any non-compliance with the Companies Act and Regulations, IRBA has notified OCPE in the past, and since 2011, CIPC, of the irregularities.

Initially, during 2011 to about September 2013, the reportable auditing irregularities received from IRBA by the CIPC, were dealt with by the whole Enforcement and Compliance team. Since the establishment of the CGSE and CCDD as separate units, and effectively from October 2013, the Reportable Irregularities stream within the CCDD unit has been responsible for creating a register and administering the investigation of these complaints by CCDD investigators.

5.5.2 Reportable irregularities in terms of Section 45 of APA

Under the APA, a reportable irregularity is defined as any unlawful act or omission committed by any person responsible for the management of an entity, which:

- ❖ has or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor, or investor of the entity in respect of his, her or its dealings with that entity;
- ❖ is fraudulent or amounts to theft; or
- ❖ represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor, or investor of the entity under any law applying to the entity or the conduct or management thereof.⁹¹

By referring to a breach of directors' fiduciary duties, this definition therefore covers a wider spectrum of

contraventions than the irregularities reported under Regulation 29 by independent reviewers.⁹²

5.5.3 Reportable auditing irregularity reporting process

Under the APA, if a registered auditor has reason to believe that a reportable irregularity has taken place, the auditor is obligated to follow the following process:

- ❖ The auditor must, without delay, send a First Report to IRBA that includes the particulars of the reportable irregularity and any other appropriate information.
- ❖ Within three (3) days of submitting the First Report to IRBA, the auditor must notify management in writing of the sending of the report and provide them with a copy.
- ❖ Within 30 days of having sent the First Report, the auditor must take reasonable measures to discuss the matter with the management of the entity and afford them an opportunity to make a representation in respect of the report.
- ❖ Within the same 30-day period, the auditor must send a Second Report to IRBA, which will confirm or dispel the auditor's initial suspicion. This Second Report must include:
 - A statement that no reportable irregularity has taken place or is taking place, or the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, or that the reportable irregularity is continuing; and
 - detailed particulars and information supporting the statement.
- ❖ For reports where the irregularity is deemed to continue, IRBA notifies and forwards the reports to the relevant regulator.⁹³ For irregularities related to non-compliance with the Companies Act and Regulations, IRBA files the reports with CCDR by forwarding copies of the auditor's reports and relevant attachments to the email address of the official within the Reportable Irregularity Stream who are responsible for the administration of the RI register.

The process to be followed by the CCDR unit upon receiving the reportable irregularity reports from IRBA, is as follows:

- ❖ Upon receiving the reports, a dedicated official within the Reportable Irregularity Stream records the reportable irregularity in the Reportable Irregularity Case Register with a case number.

- ❖ The official sends an acknowledgement by email to IRBA and allocates the case to a designated CCDR investigator.
- ❖ Upon assessing the reports from the auditor, the investigator may either refer the matter and a copy of the reports to any appropriate regulator in writing, or else may further investigate the alleged contravention of the Act.
- ❖ Should the investigator find that the directors or members of the entity failed to adequately address the contraventions and/or failed to comply with the provisions of the Act, the investigator may issue a compliance notice (CoR139.1) to the entity, to require the directors to cease, correct, or reverse any action in contravention of the Act, and/or to take any other steps reasonably related to the contravention and designed to rectify its effect.
- ❖ If the entity cooperates and resolves the matter, the case is closed by the designated investigator.
- ❖ Upon closure of the case, the investigator informs the dedicated official and provide a reason for the closure to update the Case Register.
- ❖ IRBA is also informed of the outcome of the case.⁹⁴

5.6 The Prospectus Registration stream

5.6.1 Definition and mandate

South Africa has two regimes which govern the disclosure of information by entities that issue securities to the public:

- ❖ The disclosure obligations set out in the Companies Act and Regulations that apply to all companies incorporated in South Africa, and that is administered by the CIPC; and
- ❖ The obligations imposed on listed companies and applicants for listing by the JSE Listing Requirements. These requirements are issued by the JSE and approved by the FSCA.⁹⁵

Before a company can offer its shares/securities to the public, it must register a prospectus which complies with the Companies Act, by getting approval for that prospectus with the relevant exchange if it intends listing, or by filing the prospectus with the CIPC. A prospectus sets out the details of the investment offering of shares/securities for sale to the public by the relevant company, to provide potential investors with adequate and empowering information to enable them to make informed decisions and risk assessments.⁹⁶

Prospectus registration or Public Offering of Company Securities is dealt under Chapter 4 of the

Companies Act. The CIPC is thereby mandated to screen the prospectuses filed under the Act to ensure that their content adheres to the Act and other relevant legislation, such as that required for property syndication schemes under the Consumer Protection Act 68 of 2008.⁹⁷

5.6.2 The vetting and registration process

All draft and final prospectuses are vetted by assessing against an electronic checklist that includes both the legislative disclosure requirements and a narrative explanation. A Prospectus Vetting Committee (PVC) comprising all the staff of CCDR, conducts a substantive review on Fridays for each of the prospectuses received by Wednesday that week. Further, a process for periodic reporting after registration has been adopted as part of the prospectus monitoring functions. The company must report on the offer when it closes to declare the number and rand value of shares issued, and again six (6) months and twelve (12) months later. These later reports confirm that the terms and conditions of the offering continue to be complied with and declares that the funds have been used for the purposes stated in the prospectus.⁹⁸

The registration of a prospectus by the CIPC does not indicate any support for or qualifies the potential investment as a good investment opportunity. Registration merely indicates the compliance of the prospectus with the minimum requirements set out in the Companies Act and Regulations.⁹⁹ There are no express requirements under the Companies Act mandating specific disclosure of the risks of the issuer's business in a prospectus. As part of its prospectus review process, the CIPC however has a practice of requiring the prospectus to be accompanied by a table reflecting all the risks relating to the offer as well as any mitigating factors.¹⁰⁰

5.6.3 Other registrations

The prospectus stream further administers the registration of the following to ensure that it is compliant with the Act:

- ❖ **Employee Share Schemes.** These are schemes established by a company, by means of a trust or otherwise, for the purpose of offering

participation therein solely to employees, officers and other persons involved in the business of the company or a subsidiary of the company. The participation may be in the form of shares in the company, or by a grant of options for shares in the company.¹⁰¹

- ❖ **Rights Offers.** These refer to offers with or without a right to renounce in favour of other persons, made to any holders of a company's securities for subscription of any securities of that company, or any other company within the same group of companies.¹⁰²
- ❖ **Compromises.** These refer to agreements or proposals reached between a company and its creditors, to the benefit all the relevant parties.¹⁰³
- ❖ **Schemes of Arrangement.** According to Section 114 of the Act, the board of a company may propose and implement any arrangement between the company and holders of any class of its securities by way of a consolidation of securities of different classes; a division of securities into different classes; an expropriation of securities from the holders; exchanging any of its securities for other securities; a re-acquisition by the company of its securities; or a combination of these methods.¹⁰⁴

6. DETAILED FINDINGS FROM THE STATISTICAL ANALYSIS OF REPORTABLE IRREGULARITIES

6.1 Trends analysis for reportable irregularities received from independent reviewers in terms of Regulation 29

6.1.1 Statistics of independent review cases April 2013 – March 2023

Between April 2013 to March 2023, the IR Stream of the CCDR unit received a total number of 1 351 reportable irregularities from independent review practitioners, of which 1 225 have been closed. The majority were finalized while in the preliminary evaluation phase of investigation, indicating that most companies prefer to cooperate to resolve the matters. Only 14 compliance notices were issued to companies that remained non-compliant or were non-responsive.

Table B6-1: Statistics of independent review cases

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
Received	38	42	35	89	114	173	176	267	226	191	1351
Total Closed	38	42	35	89	114	173	176	266	217	142	1292
Closed during year	0	23	24	66	75	172	92	298	272	203	1225
Closed 2013/14											0
Closed 2014/15		23									23
Closed 2015/16		2	22								24
Closed 2016/17			1	65							66
Closed 2017/18				3	72						75
Closed 2018/19				13	34	125					172
Closed 2019/20				1	2	16	73				92
Closed 2020/21				5	6	24	74	189			298
Closed 2021/22				2		8	26	67	169		272
Closed 2022/23							3	10	48	142	203
Closed 2023/24									3	27	30
Closure not indicated	38	17	12								67
Pending								1	9	49	59
Compliance Notices			1				5	1	3	4	14
Compliance Certificates										3	3

6.1.2 Number of independent review cases received

It is evident that the CCDR unit, and particularly the IR stream, has taken some major steps, and made substantial headway, to implement CCDR's business plan, and to set the wheels in motion for IR to take off as smoothly, and successfully as possible. Despite the reporting of irregularities by independent reviewers remaining low, the unit has seen an increase in IR reports being sent to CIPC from 2013 to date. However, greater awareness to the public and accounting officers can still be improved to allow Regulation 29 to serve the purpose it was intended for in the new Companies Act.¹⁰⁵

Due to the initial low uptake of the use of independent reviews as a form of assurance, and the low levels of reporting by recognized independent review practitioners, the CCDR unit consulted with accounting and auditing professional bodies throughout the country to explore ways to address these challenges. Several online seminar events were organized to meet targeted audiences and address challenges.¹⁰⁶

Figure B6-1 illustrates that these interventions started to pay off and that the volumes of reports increased significantly from 2016 onwards. The rate of closure for these cases have been well maintained over the years, with an overall closure of 95% of received cases as shown in **Figure B6-2**.

Figure B6-1: Comparison of the number of RIs received from independent reviewers, closed and the number of compliance notices issued

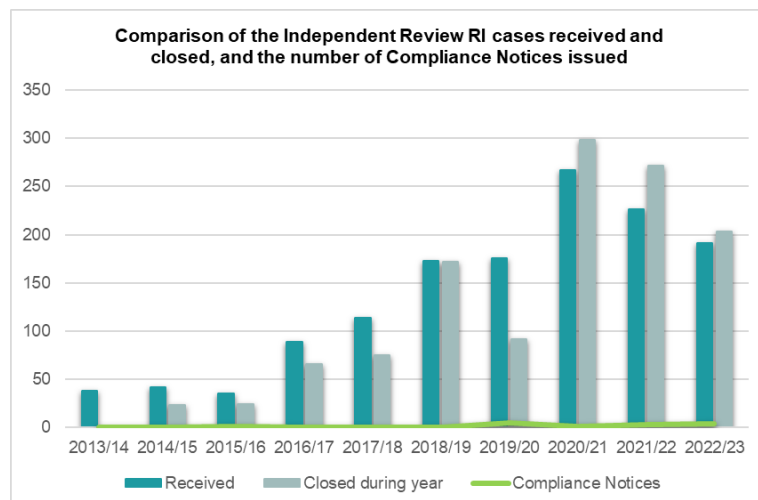
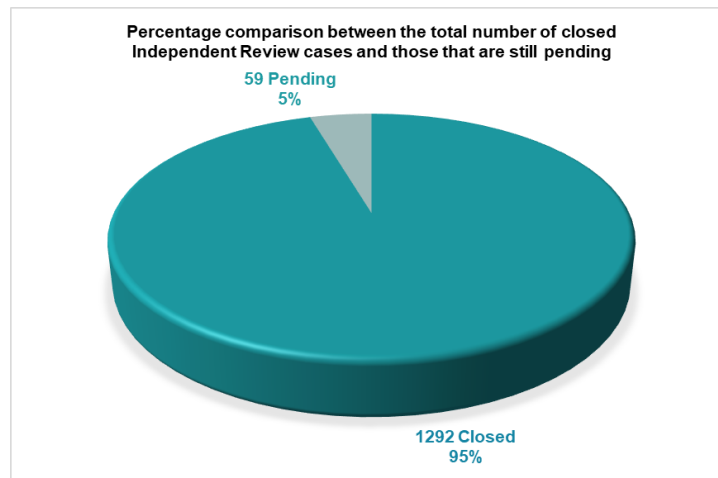


Figure B6-2: Comparison between the total percentage of independent review cases closed and those that are still pending between April 2013 to March 2023



6.1.3 Number of independent review reports received per company type

The majority (96.52%) of reportable irregularities received from independent reviewers concerned review engagements of the statements of private companies. Only 2% related to the review engagements of Close Corporations, while the percentages for other entity types were as follows:

non-profit companies (0.67%), external companies (0.37%), public companies (0.22%), and personal liability companies (0.22%). No reports were received for state-owned companies which is not surprising as the AFS of these types of entities must be audited. Since the AFS of public companies are also statutorily required to be audited, any independent review reports received for these entities should be subject to further investigation.

Figure B6-3: The number of independent review reports received per entity type

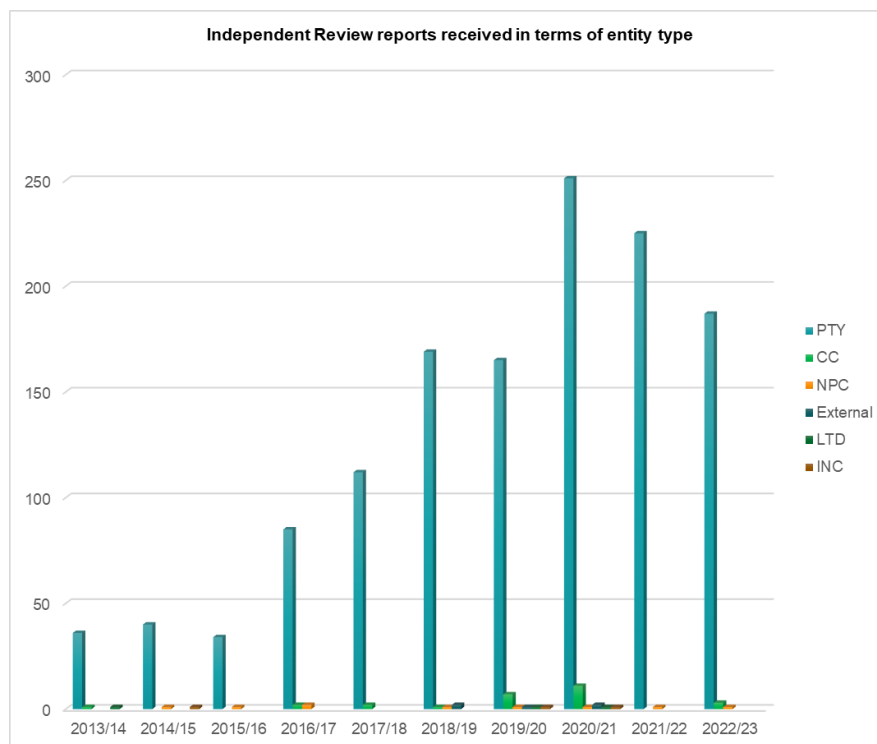


Table B6–2: Statistics of independent review reports received per entity type

Entity Type	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
PTY LTD	36	40	34	85	112	169	165	251	225	187	1304
CC	1			2	2	1	7	11		3	27
NPC		1	1	2		1	1	1	1	1	9
External						2	1	2			5
LTD	1						1	1			3
INC		1					1	1			3
SOC											0
Co-operative											0

6.1.4 Number of independent review reports received per accounting practitioner firm

From the at least 116 accounting firms that submitted independent review irregularities to the CIPC, the 19 firms shown in **Table B6-3** submitted more than ten (10) reportable irregularities between April 2013 and March 2023.

From these 19 firms, only PWC, KPMG, BDO, NEXIA, MOORE and MAZARS were considered among the Top 10 accounting firms in South Africa during 2015 based on their revenue and market share.¹⁰⁷ From the other Top 10, GRANT THORNTON submitted six (6) IR reports, DELOITTE only submitted three (3) reports while ERNST & YOUNG did not submit any.

Most of these firms started reporting RIs consistently from 2016/2017-2017/2018 onwards. According to **Figure B6-5** and **Table B6-4**, several firms reported independent review irregularities during the beginning of the period, between 2013 and 2015, but apart from MOORE, and to a lesser extent SDK and DALES VAN HEERDEN, did not continue doing so. In the case of RADEMEYER WESSON this can be explained since the firm joined the PKF network on 1 July 2015 and changed its name to PKF CAPE TOWN.¹⁰⁸ In the case of WHITFIELD FINTAX and DE BRUYN DALY, the reason is uncertain since they are still offering Accounting Officer Reports / Independent Reviews services.¹⁰⁹ AS POCOCK INC still exists but they do not have an active web presence currently.

Table B6–3: Statistics of accounting firms that submitted more than ten independent review reports

Accounting Firm	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
BAKER TILLY GREENWOODS			1	5	17	27	24	50	46	47	217
MAZARS		1	12	8	23	35	19	43	11	2	154
MD ACCOUNTANTS	5		1	4	10	16	27	25	27	26	141
NWANDA INC				6	2	6	10	24	23	20	91
FODB							12	20	30	13	75
PKF			3	2	3	4	7	26	14	15	74
STABILIS				5	11	24	10	6			56
BDO						3	2	4	18	19	46
LOGISTA						11	3	8	14	6	42
CAP				2			7	20	6		35
RSM					2	5	5	6	5	7	30
KPMG				18	2	4	3			1	28
NEXIA GROUP				1	1	2	5	3	7	7	26
WHITFIELD FINTAX	13	13									26
BOSHOF VISSEER INC							4	2	6	10	22
MOORE		3	4	3	4	1	2	3		2	22
ENSLINS			1	3			2	4	1	1	12
COLENBRANDER						1	7	2	1	1	12
PWC			1		1				8	1	11

Figure B6-4: Comparison of the submission trends among the ten accounting firms that submitted the most independent review reports between 2013-2023

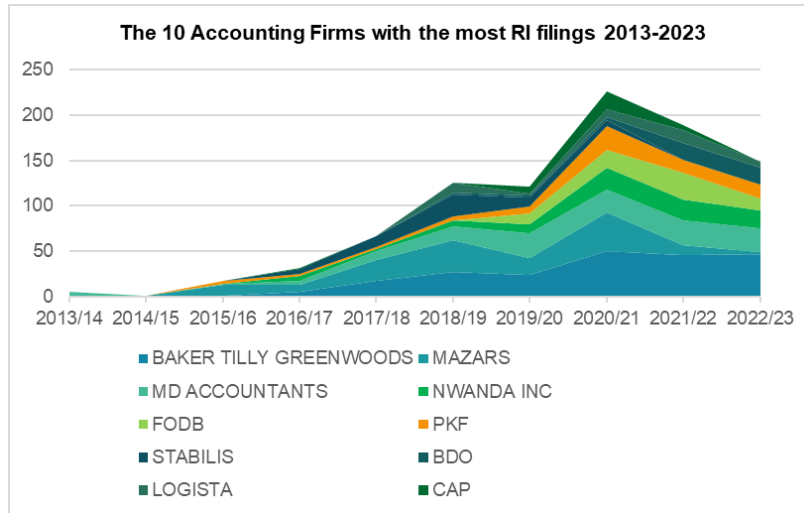


Table B6-4: Statistics of accounting firms that initially submitted independent review reports

Accounting Firm	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Total
WHITFIELD FINTAX	13	13									26
MOORE		3	4	3	4	1	2	3		2	22
AS POCOCK INC	4	2									6
RADEMEYER WESSON		2	4								6
SDK		2				2	1				5
DALES VAN HEERDEN				1	2	1	1				5
DE BRUYN DALY		5									5

Figure B6-5: Comparison of the submission trends among the accounting firms that initially submitted independent review reports

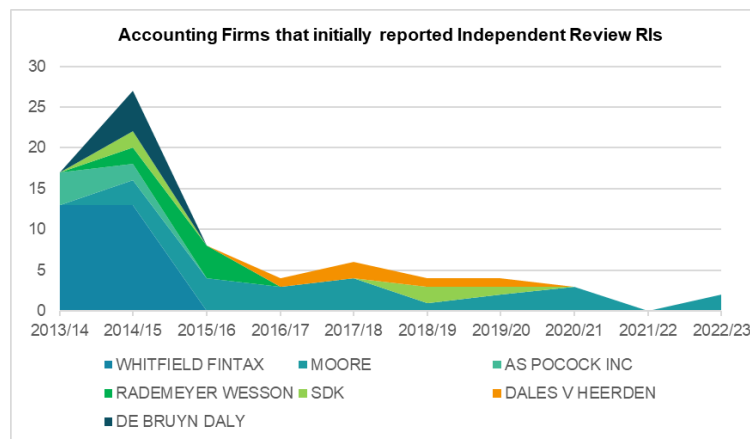
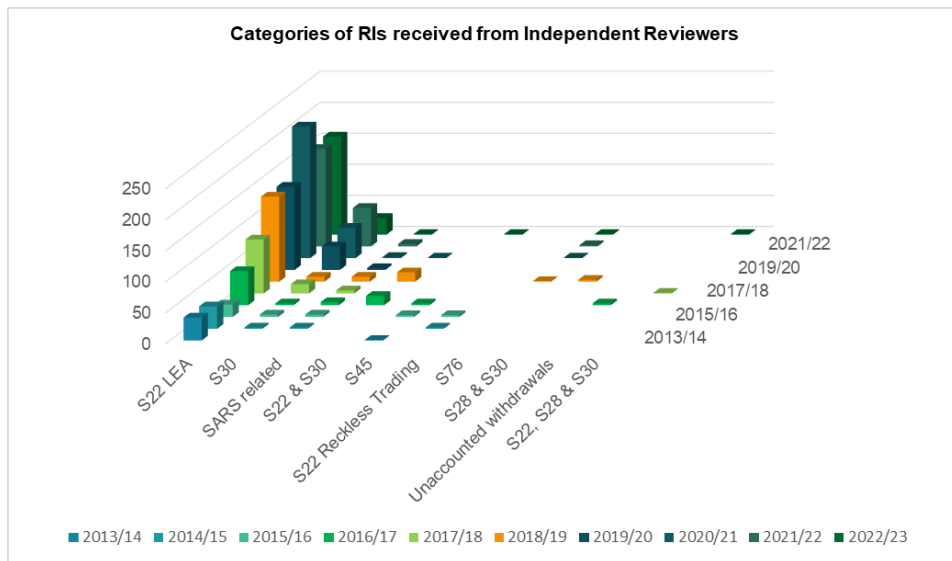


Figure B6-6: The ten most common contraventions received from independent reviewers



6.1.5 Categories of reportable irregularity contraventions received from independent reviewers

Most reportable irregularities received from independent reviewers related to contraventions from the following sections of the Companies Act:

- ❖ Section 22(2) - Liabilities exceeding assets / Technical Insolvency.
- ❖ Section 30(1) – AFS not prepared within the six-month period after the financial year-end.

Noticeable from the statistics is that the most common reportable irregularity relates to technical insolvency under Section 22 where an entity's liabilities are exceeding its assets. This is not surprising since the definition of a reportable irregularity under Regulation 29 specifically refers to an act or omission that “causes or has caused the company to trade under insolvent circumstances”.¹¹⁰

The reasons for reportable irregularities concerning technical insolvency are usually related to start-up capital provision by owners/shareholders, tough economic conditions which may influence the time it may take for companies to break even, and accounting principles applied upon the valuation of assets.¹¹¹

It is challenging to address this issue in the industry due to the complex nature of business and its operational dynamics. During 2014/15 the CIPC conducted a report on business rescue through the

University of Pretoria. As shown in **Figure B6-7**, the study identified the main reasons for financial distress in entities as creditor pressure (36%), profitability problems (20%), management capabilities (13%) and unique circumstance (10%).

The main reasons for investigators closing cases relating to Section 22 contraventions, further relate to these reasons for financial distress as indicated by **Figure B6-8**. For example, the arrangement of subordination agreements alleviate pressure from creditors, while financial support by directors and shareholders, and remedial steps and restructuring ease profitability problems. Only a minimal number of these reported companies were eventually deregistered, liquidated, ceased trading, or were placed under business rescue. The majority remained commercially solvent, improved, or recovered profitability and solvency, which indicates that the CIPC's balanced strategy of cooperative enforcement works to support distressed companies to recover.

One of the challenges with the administration of investigations on the independent review reports, includes the difficulty in obtaining contact details for entities being complained of.¹¹² For example, about twelve cases were closed because directors were unreachable. The Covid-19 pandemic had a minimal effect as only about 12 companies were reported for insolvency caused temporarily by the lockdown restrictions.

Figure B6-7: The main reasons for financial distress in entities¹¹³

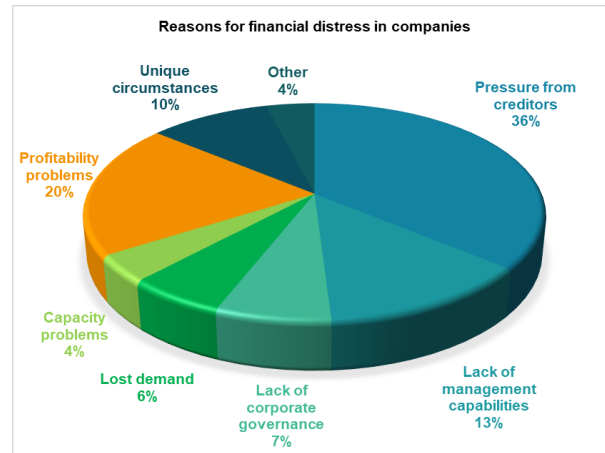
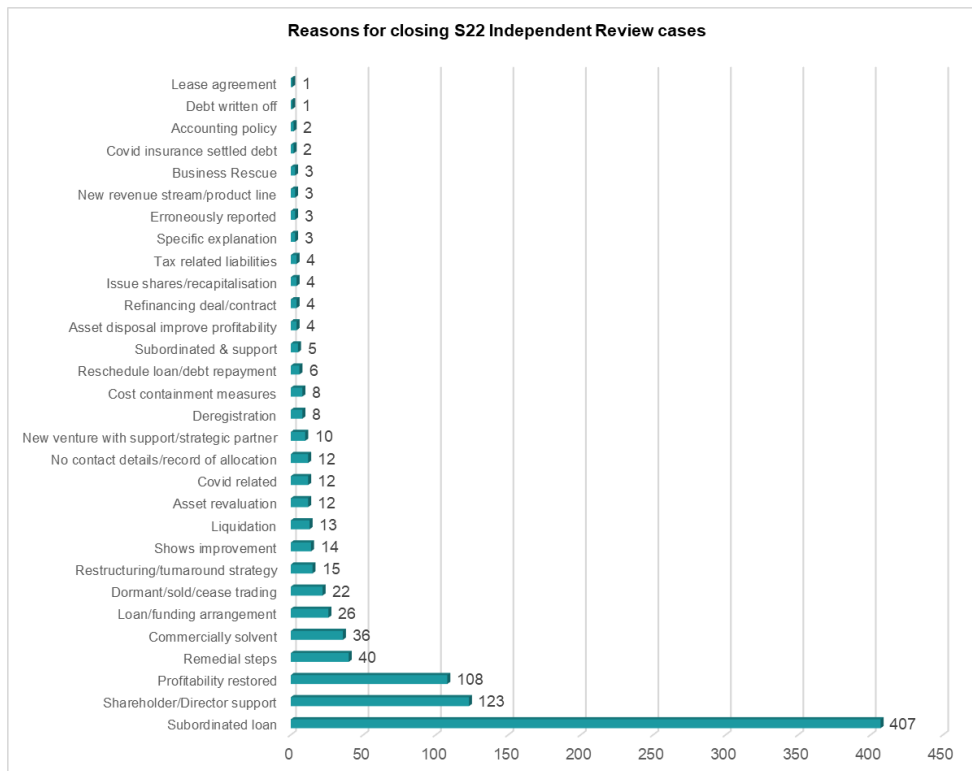


Figure B6-8: The main reasons for closing investigation cases related to reportable irregularities received from independent reviewers for S22 violations



6.1.6 Repeat offenders

About 82 companies were identified as repeat offenders that had three or more reportable irregularities under Regulation 29 reported against them over different years. From these the overall majority (99%) were private companies and most of the contraventions related to Section 22 (84%) and Section 30 (10%) contraventions.

6.1.7 Trends identified from the 2016 IR Survey

Because the rate of reporting in terms of reportable irregularities by independent reviewers has been generally low, the IR Stream performed a survey among accounting professionals and auditors during October-November 2016 to obtain statistics on the exercise and implementation of the independent review process, and to make an informed determination on the reasons why independent

review practitioners are not reporting reportable irregularities, or why few companies are using independent review as a form of assurance. A formal request was submitted to the organisations responsible for independent review practitioners to identify who amongst their membership practices as independent reviewers, and to request from them to answer the survey questions.¹¹⁴

The results confirmed that practitioners were aware of the processes and procedures to report reportable irregularities and that credit providers preferred audited AFS as opposed to independently reviewed AFS.¹¹⁵ Although participants came from all the different professional bodies, members from SAIPA (45.61%), SAICA (27.41%) and IRBA (18.42%), dominated the numbers in terms of having their members performing independent reviews. It was clear from the results that most participants had clients that perform independent reviews. It was also clear from the range of clients, that the participants had mostly less than ten (10) independent review clients (50.66%) followed by those who have more than ten (10) clients (35.31%). The number of participants who did not do an independent review was found to be minimal at only 14%.¹¹⁶

A concern was the about 14.47% of practitioners who indicated that they did not follow the prescribed procedure and/or were not aware that RIs should always be reported to the CIPC, as well as the 10.75% who were unsure about what constituted a reportable irregularity. More education and awareness interventions were therefore required to educate the industry. Practitioners experienced the top three irregularities to be:

- ❖ Technical insolvency.
- ❖ Fraud / financial loss due to a material breach of directors' duties.
- ❖ AFS not prepared / approved within six months.¹¹⁷

The survey allowed CCDDR to formulate a clearer picture of the possible root causes behind the slow uptake of independent reviews by SMEs and companies with a public interest score of between zero and 350 points. This perceived reluctance of the market to embrace independent reviews was a concern, especially since the CIPC had undertaken numerous interventions to promote independent reviews to various industry representatives.¹¹⁸ The survey further concluded that service providers must be engaged as to the benefits of independent reviews. About 37.72% of respondents indicated that the requirements given by different service providers in the business landscape determine or lead companies to opt for

an audit even though the company would qualify for an independent review. About 19.30% indicated that the company's MOI also played a part. This can be attributed to most entities being registered before the 2008 Companies Act came into effect and their MOI still dating from the pre-2011 period. Cost implications played a negligent part since most respondents stated that they opt for an audit because of the limited assurance that an independent review provides.¹¹⁹

6.1.8 Trends identified from the 2021 IR Survey

The Commission issued another Independent Review Survey during September 2021 to gauge the practical problems experienced in the performance of independent reviews, the reporting of reportable irregularities, and the effect of Covid-19 on the practitioners. The survey enabled the CIPC to identify deficiencies relating to independent reviews that needed to be addressed.¹²⁰

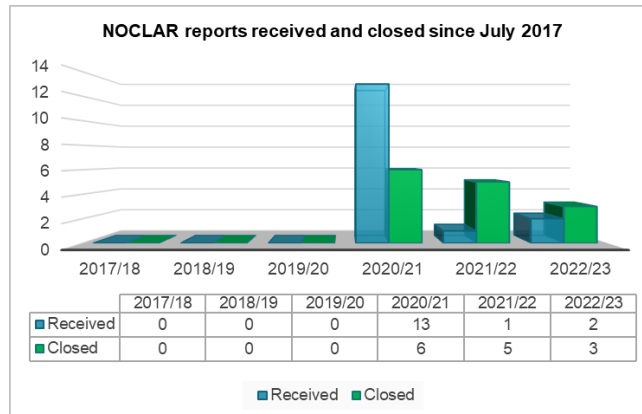
The survey indicated that more than 50% of the respondents had at least ten clients, and that 99,5% of them were aware of the companies that need to be independently reviewed. More than 80% of the respondents were aware of the framework when performing an independent review and were familiar with the reporting procedures as prescribed in Regulation 29(6–8) of the Companies Regulations. Fewer than 20% of respondents indicated that they had reported a reportable irregularity to the CIPC. Since only eight (8) SAICA members responded to the survey, this number is therefore not a true reflection of the members involved.¹²¹

The top identified reportable irregularity was AFS not being prepared and submitted within six months from the financial year-end. More than 90% indicated that the Covid-19 pandemic had a negative impact on some of their clients, with the tourism sector being the most affected. Despite the negative impact of Covid-19, about 59% of the independent reviewers have gained between one (1) and ten (10) new clients.¹²²

6.2 Reports received for Non-Compliance with Laws and Regulations (NOCLAR)

Since becoming effective on 15 July 2017, the CIPC has only received sixteen (16) NOCLAR reports. Most of these reports (81%) related to Section 30 contraventions, while 13% related to Section 94 contraventions concerning Audit Committees. The remaining 6% concerned Section 214 violations.

Figure B6-9: Statistics for NOCLAR reports received since July 2017



6.3 Trends analysis for reportable irregularities received from IRBA in terms of Section 45 of the APA

6.3.1 Statistics of reportable irregularities received from IRBA from April 2013 to March 2023

Between April 2013 to March 2023, the RI Stream of the CCDR unit received a total number of 2 370 reportable irregularities from IRBA and 2 178 of these were closed. The statistics for the 2013/14 financial year include the reports (118) received from IRBA between April to September 2013 before the establishment of the separate CGSE and CCDR units.

Of the 2 178 matters finalized, the majority were resolved during preliminary evaluation. A total number of 233 compliance notices were issued in terms of Section 171, read with Regulation 139 (Form CoR139.1). Only five (5) companies complied with the compliance notices issued and received compliance certificates.

6.3.2 The volumes of reportable irregularities received from IRBA

Incidentally **Figure B6-10** shows that the volumes of reportable irregularities received by IRBA do not correlate with the trends in numbers received by CIPC over the period from 2016/2017 to 2019/2020. Where the CIPC experienced a slight decline in reportable irregularity cases over this period, IRBA received more than the usual number of reports. This indicates that other factors were involved that influenced the decline in reportable irregularities received by the CIPC over this period. From 2020/21 onwards IRBA however also experienced a sharp decline in receiving reportable irregularity reports from auditors.

It is noticeable from **Figure B6-11** that a large percentage of the RIs reported to IRBA are referred to the CIPC. The other reports received by IRBA are mostly referred to regulators such as SARS, Department of Labour, the Estate Agency Affairs Board, the FSCA, and the Financial Intelligence Centre (FIC), among others.¹²³

Figure B6-10: The number of continuing RI's received by IRBA between 2013-2023 and compared to those referred to the CIPC

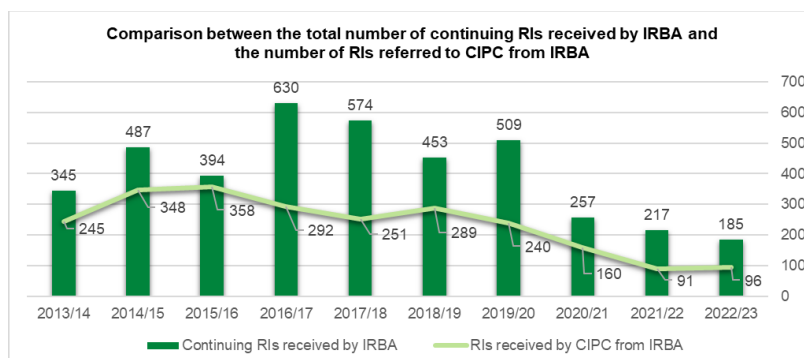


Table B6-5: Statistics for reportable irregularities received from IRBA between April 2013 to March 2023

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	Totals
IRBA RIs received	245	348	358	292	251	289	240	160	91	96	2370
Closure not indicated	85	9	12				7	17	22	36	188
Closed but no date	26	1									27
Closed 2013/14	63										63
Closed 2014/15	62	247									309
Closed 2015/16	6	70	257								333
Closed 2016/17	3	3	85	266							357
Closed 2017/18		1	5	40	143						189
Closed 2018/19				12	71	178					261
Closed 2019/20				3	13	64	96				176
Closed 2020/21				3	11	35	119	89			257
Closed 2021/22						11	15	50	48		124
Closed 2022/23						1		1	21	59	82
Closed total	160	322	347	324	238	289	230	140	69	59	2178
Pending	85	26	11	-32	13	0	10	20	22	37	192
Closed per year	63	309	339	360	189	261	176	257	124	82	2160
Pending per year	182	39	19	-68	62	28	64	-97	-33	14	210
Compliance Notice for year	4	48	39	38	24	31	12	20	6	4	226
CN 2013/14	4										4
CN 2014/15	9	39									48
CN 2015/16	0	26	13								39
CN 2016/17	0	1	17	20							38
CN 2017/18	0		1	11	12						24
CN 2018/19	0			2	18	11					31
CN 2019/20	0				5	2					7
CN 2020/21	0					4	8	8			20
CN 2021/22	0					1	6	5			12
CN 2022/23	0								6	4	10
Total Compliance Notices	13	66	31	33	35	18	14	13	6	4	233
Compliance Certificates		1	2	1					1		5

Figure B6-11: The percentage of continuing RIs received by IRBA that relates to non-compliance with the Companies Act

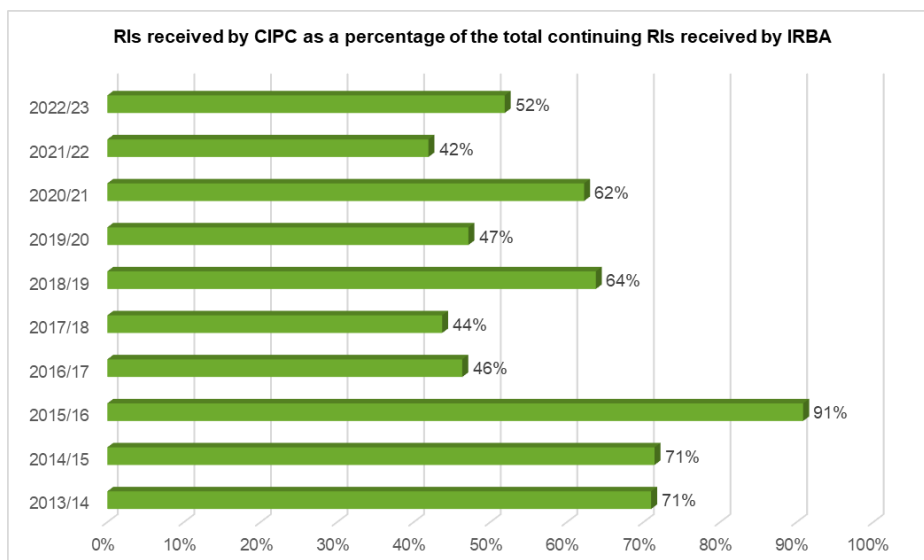


Figure B6-12: Comparison of the number of RIs received from IRBA, and which were closed or had compliance notices issued for the particular year

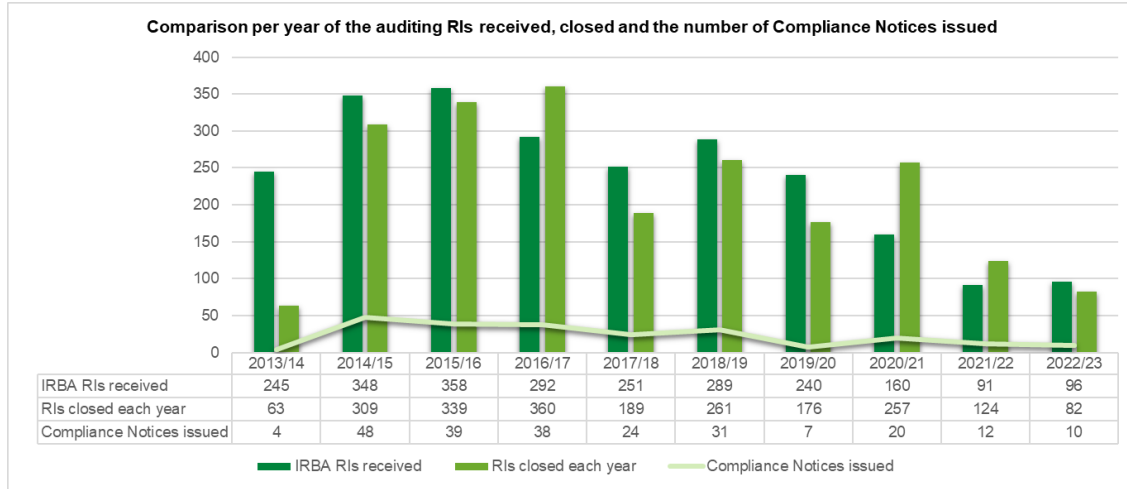


Figure B6-13: Comparison of the number of RIs received from IRBA and closed between April 2013 to March 2023

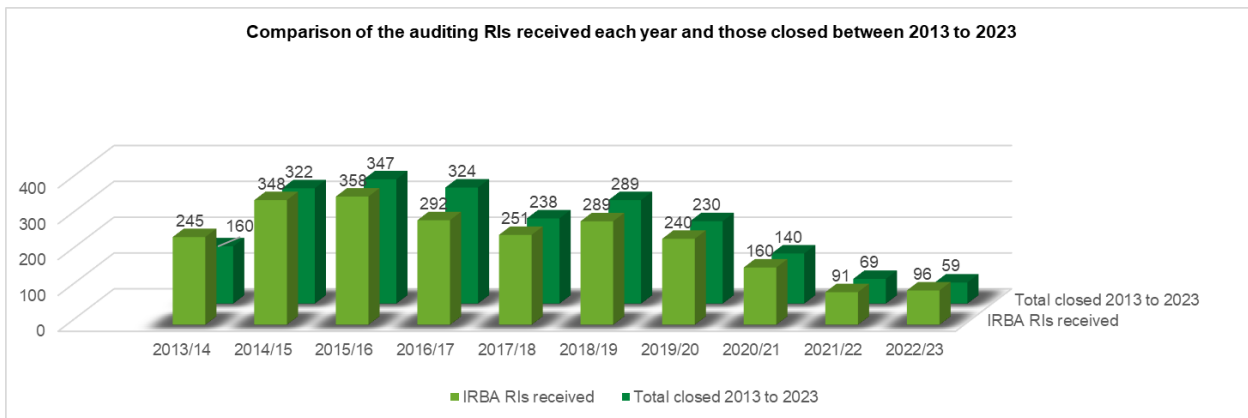


Figure B6-14: Comparison between the total percentages of auditing RIs closed and still pending

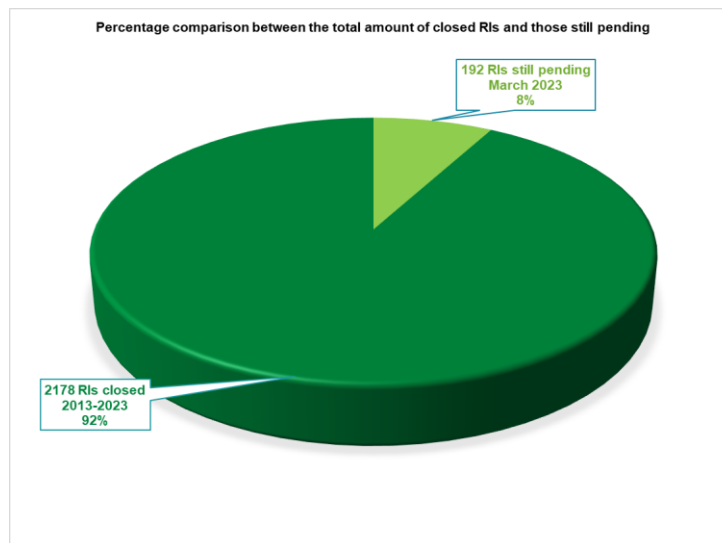


Figure B6-15: Comparison between the total percentages of auditing RIs closed and pending for each particular year

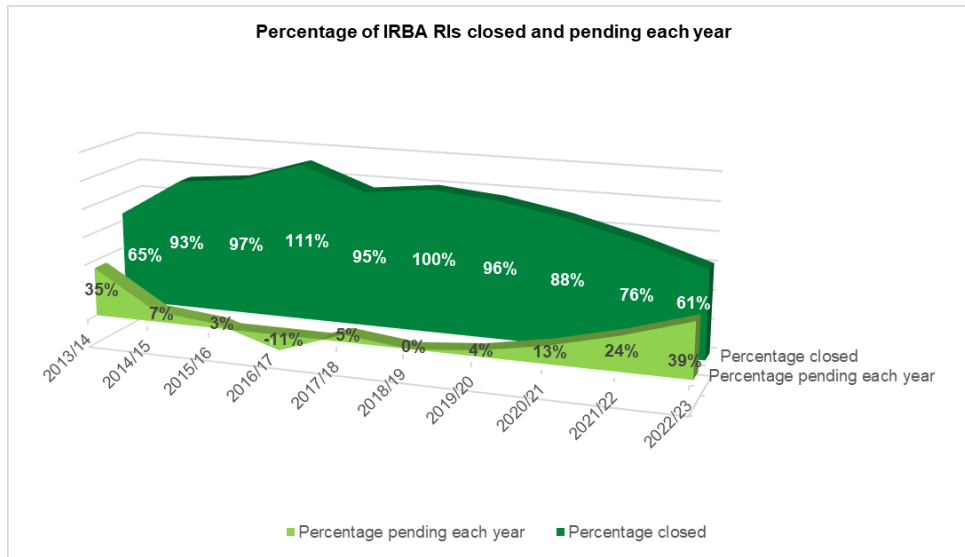


Figure B6-15 illustrates that the initial percentage of pending cases were high during 2013-2015. This could be explained due to internal restructuring and the unit still being new and lacking in standard processes and enough staff. Few cases were closed during 2013/14 as a result, or alternatively the closures were not captured properly on the register. The reasons for the increase in the percentage of pending cases during 2019-2023 are uncertain, especially since, as can be seen from **Figure B6-12** there was a decline in the volumes of reports received from 2020/21 onwards while the number of closures relative to the received numbers were high, indicating that several pending cases were closed during this period.

During June 2014, seven (7) new employees joined the CCDR unit and received on-the-job training. Based on the statistics, it is evident that the impact of having additional team members became visible during 2015 since the percentage of pending cases started to decline due to the cases being more expeditiously finalized.¹²⁴

During **2015/16**, cases were closed for various reasons such as entities cooperating to resolve the violations, or complying with compliance notices, entities being liquidated or deregistered, and some matters being referred to other regulators. With investigations being dependent on the response from the entity being investigated, the number of cases being closed varied from quarter to quarter.¹²⁵

During **2016/17** several initiatives were conducted to address challenges in reportable irregularities. An engagement boardroom visit was set up with a

perpetually non-compliant company. The CIPC met with the CEO and his management, legal and auditing teams apologized for their continued non-compliance and committed to comply going forward.¹²⁶

Filing of reportable irregularities increased slightly during the **2018/19** reporting period. The rate at which RIs are sent to the CIPC are influenced by revelations in the marketplace and the tendency by audit firms to default, or procrastinate, on their duty to report reportable irregularities by audited entities.¹²⁷

During **2021/22**, the volumes of reportable irregularities received showed a downward trend. The Covid-19 impact on businesses cannot be ruled out. The pandemic may have had a negative impact on governance, the keeping of accounting records and the ability of auditors to conduct audits. The instability in IRBA could also have resulted in a lower capacity to process the received reports. Delays in the closure of cases can be attributed to the auditor and board not responding when expected to clarify if the non-compliance is continuing or not. A higher number of closed cases was achieved during the year as it was resolved to prioritise long outstanding matters. Some cases were followed with compliance notices, and in some instances closed due to lack of interest from the parties in further pursuing the matters.¹²⁸

6.3.3 Number of reportable irregularities received from IRBA per entity type

Most of the cases of non-compliance were reported against private companies. It is possible that the

culture of the old 1973 Companies Act was brought into the new dispensation with the new 2008 Companies Act. With the new Act advocating for increased disclosure and transparency, it was expected that the culture of non-compliance would decrease as the provisions of the Act were enforced.¹²⁹ It could also be that since most registered entities are private companies, the percentages of entity types for which reportable irregularities are received from IRBA, would correlate with the overall entity type registration profile for CIPC.

As illustrated in **Figure B6-16**, as an example, the majority (85%) of reportable irregularities received from IRBA for 2018/2019 concerned audit engagements of the statements of private companies. The percentages for other entity types were as follows: public companies (7%), non-profit organization (3%), Close Corporations (2%), state-owned companies (1%) and cooperatives (1%).

Figure B6-16: Reportable irregularities received from IRBA per entity type during 2018/2019

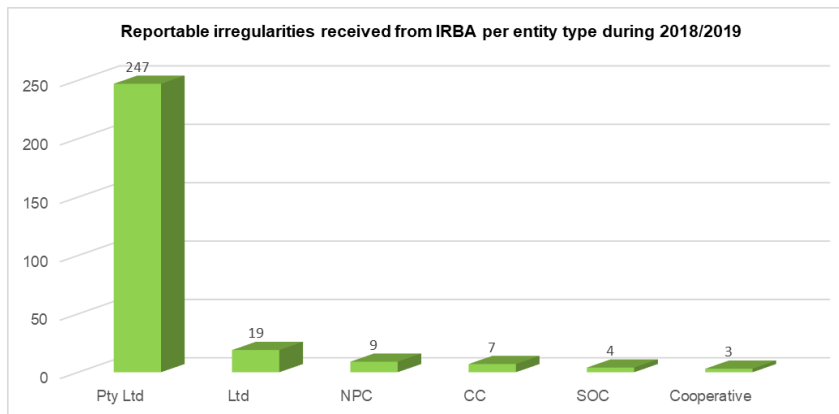
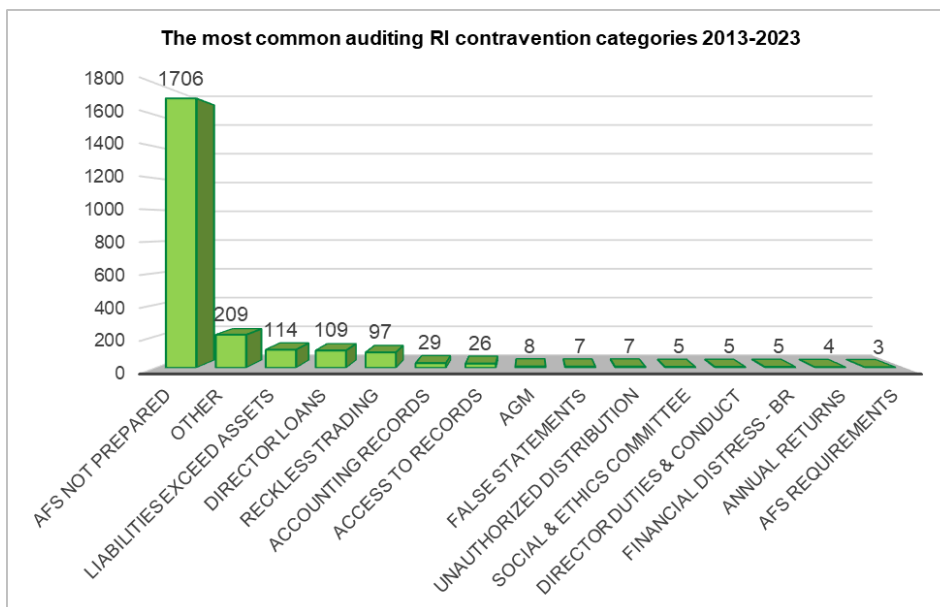


Figure B6-17: The most common auditing reportable irregularity contraventions between 2013-2023



6.3.4 Categories of auditing reportable irregularity contraventions received from IRBA

The most common contraventions reported as irregularities by IRBA, relate to the following sections of the Act:

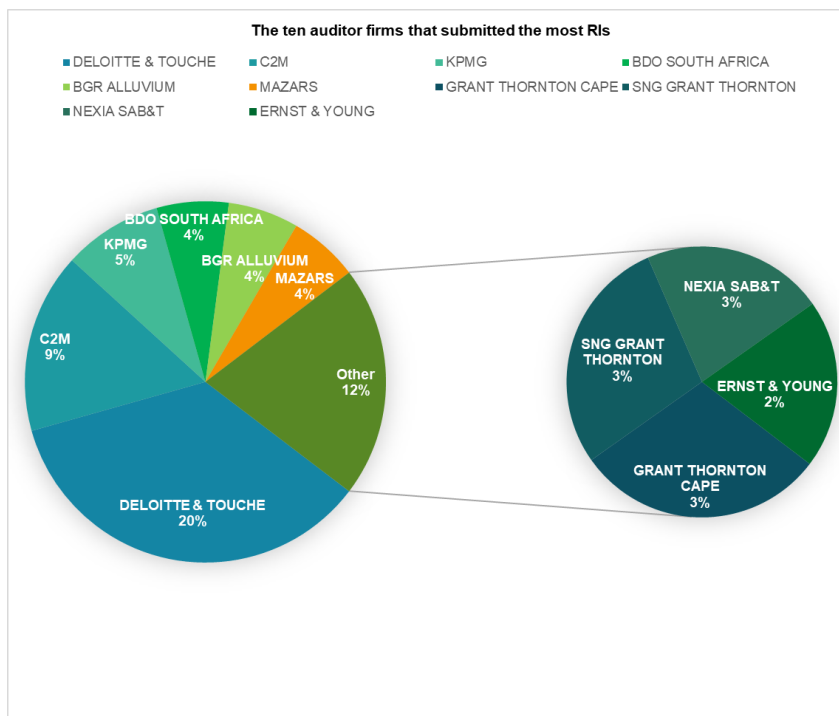
- ❖ Section 30(1) - AFS not prepared within the required six months from the financial year-end (73%).
- ❖ Section 22 – Trading under insolvent circumstances, reckless trading, liabilities exceeding assets (9%).
- ❖ Section 45 – Financial assistance or loans to directors without the required solvency and liquidity test (5%).
- ❖ Sections 24 and 28 – keeping accurate company and accounting records (1%).
- ❖ Section 26 – Access to company records (1%).

As can be seen from **Figure B6-17**, many entities are not in compliance with the requirement to

prepare AFS within six (6) months from the end of the financial year, and this culture is being addressed through conducting investigations and issuing compliance notices where necessary. The process is also used as an educational opportunity to prevent target entities from becoming repeat offenders. A compliance notice only gets issued if entities fail to demonstrate change in their governance practices or fails to commit to changing behaviour to avoid future non-compliance. It was proposed that education and awareness interventions should be developed to address this challenge.¹³⁰

During **2022/23**, an increasing number of reportable irregularities were received for not complying with Section 45 of the Act. Company directors seem oblivious to the requirements of the provision, and do not take the prescribed resolution for financial assistance, with the relevant solvency and liquidity test, seriously.¹³¹

Figure B6-18: The ten auditing firms that submitted the most reportable irregularities



6.3.5 Top auditor firms filing reportable irregularities with IRBA

Figure B6-18 and **Figure B6-19** illustrate the ten auditing firms that filed the most, namely between 62 and 525 reportable irregularities, between 2013 and 2023.

From these firms, DELOITTE & TOUCHE, ERNST & YOUNG, and KPMG are considered among the Top 4 audit firms while MAZARS, GRANT THORNTON and BDO are ranked among the Top 7. The other Top 4 firm, PWC, filed forty-four reports during the period.

From **Figure B6-20** and **Figure B6-21** reports by the Big 4 firms amount to only 29% of the total reportable irregularities received by CIPC, while reports from the Top 7 firms amount to 46% of the total reports received.

These statistics shows that smaller auditing firms constitute most firms reporting on reportable irregularities. Any awareness drives should therefore not only focus on the bigger firms but should also include the smaller firms to extend the reach of the intervention.

Figure B6-19: Trends analysis of the submissions by the ten auditing firms with the most RI filings

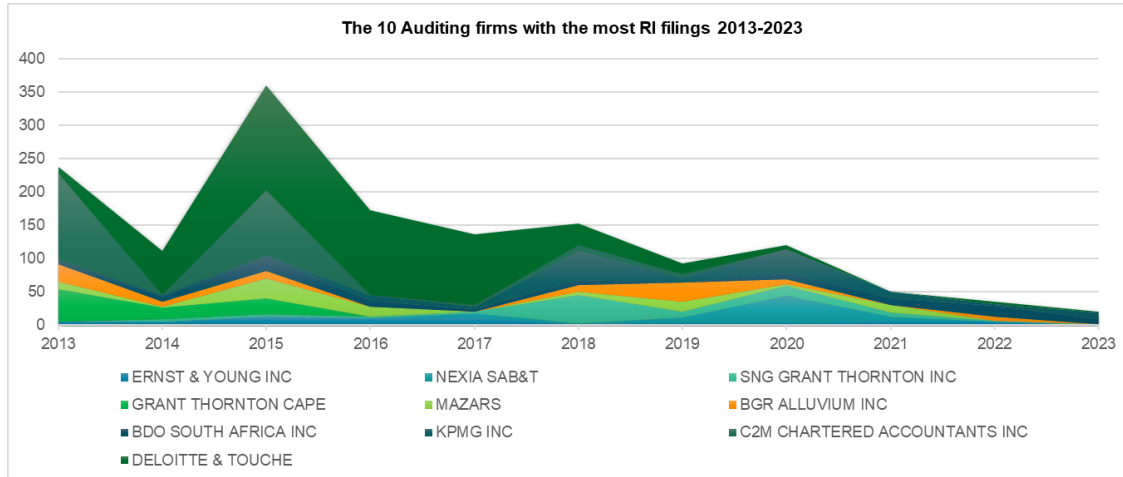


Figure B6-20: Comparison of the percentage of reportable irregularities received from the Big 4 auditing firms

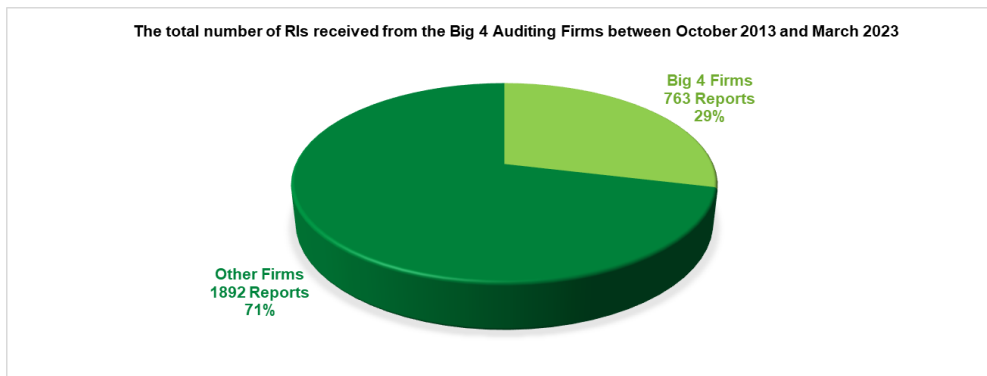
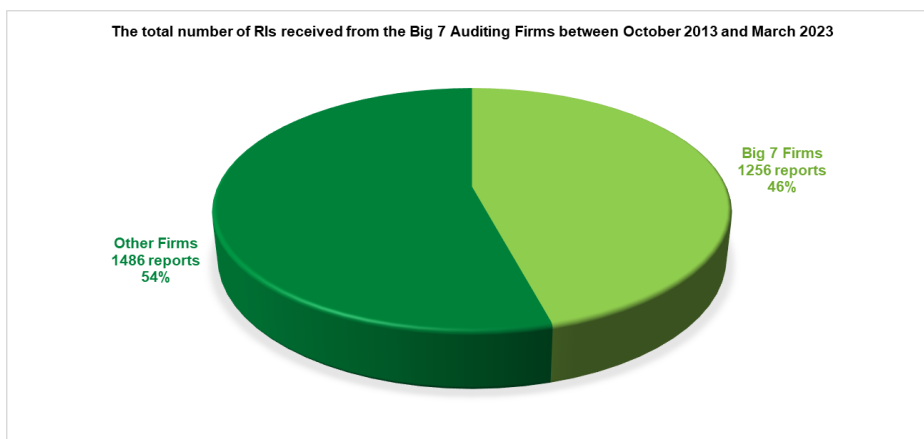


Figure B6-21: Comparison of the percentage of reportable irregularities received from the Big 7 auditing firms

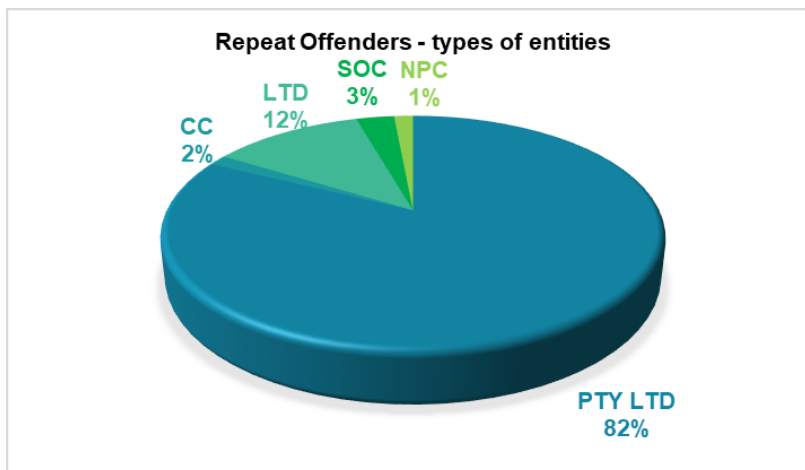


6.3.6 Repeat offenders

About 68 companies were identified as repeat offenders that had at least three (3) auditing reportable irregularities reported against them over at least three (3) different years.

Most of the reports were received for private companies (82%), followed by public companies (12%), state-owned companies (3%), Close Corporations (2%) and non-profit companies (1%).

Figure B6-22: Comparison of the types of entities among the list of repeat offending entities with three or more RIs



6.3.7 The 2014 IRBA reportable irregularity financial drive

Overall, the Commission attaches a high degree of importance to the reportable irregularities received from IRBA. The CIPC therefore embarked on an IRBA RI financial compliance drive during 2014. IRBA reported on some of the undertaken highlights from this compliance drive:

- ❖ During the 2013/2014 financial year, 160 compliance notices were issued to companies where reasonable grounds existed that the companies had contravened Sections 28, 30 and 61(7) of the Act.
- ❖ At the end of March 2015, compliance certificates were issued to 38 of the companies to which compliance notices were issued.
- ❖ A total of 69 companies were put on the cold case list as the companies either did not respond to the compliance notices issued or claimed that they were dormant.
- ❖ In respect of 25 companies, authorization was given to forward their non-compliances with compliance notices to the NPA for prosecution.
- ❖ At that point in time, 15 cases had also been opened with the SAPS for purposes of prosecution.¹³²

6.4 A comparative analysis of reporting trends between auditing and independent review reportable irregularities and investigation complaints

Figure B6-23 shows that the number of cases received for reportable auditing irregularities from IRBA are similar to the number of complaints overseen by CGSE.

According to **Figure B6-24** a large majority of both the reportable irregularity cases received from IRBA (92%), and the independent review practitioners (96%) have been closed, while the closure for CGSE cases amounts to 84%.

From **Figure B6-25** and **Figure B6-26** it can be concluded that where the volume of reports received from the independent reviewers increased over the years, the volumes of reports received from IRBA decreased. The volumes of complaints managed by CGSE were fluctuating over the years and the unit experienced a sharp increase in complaints received during 2021/2022. The closure rates for the respective cases follow the same trends.

Figure B6-23: Comparison between the volumes of reportable irregularities and investigation complaints received

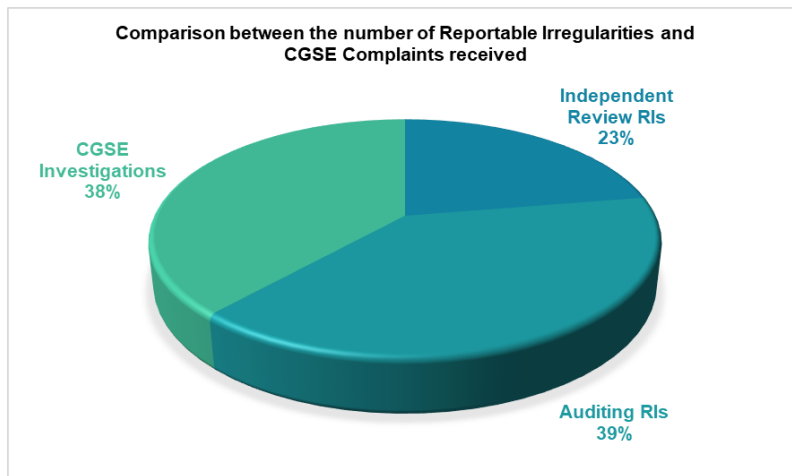


Figure B6-24: Comparison between the percentage of cases closed between the reportable irregularities and investigation complaints

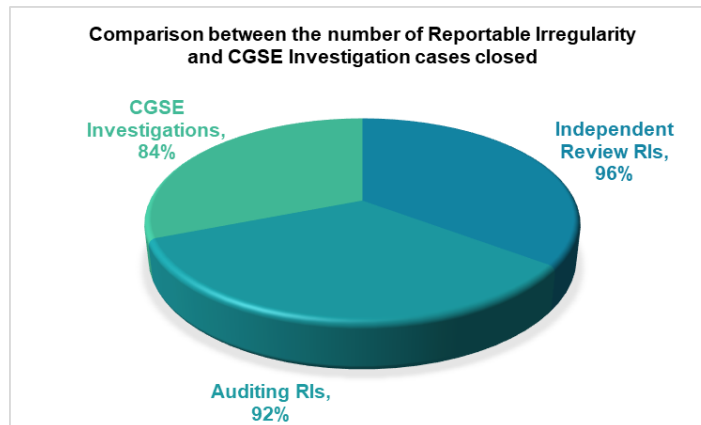


Figure B6-25: Comparison of the filing trends between reports submitted from the independent reviewers, IRBA and CGSE complaints

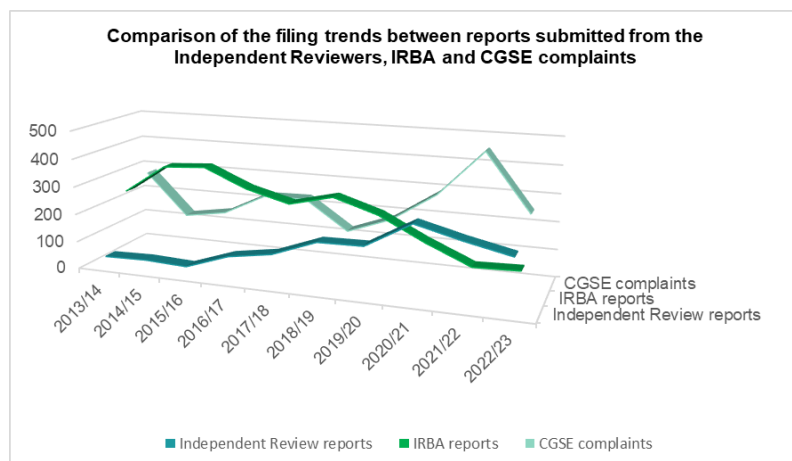


Figure B6-26: Comparison of the closure trends for cases received from the independent reviewers, IRBA and CGSE complaints

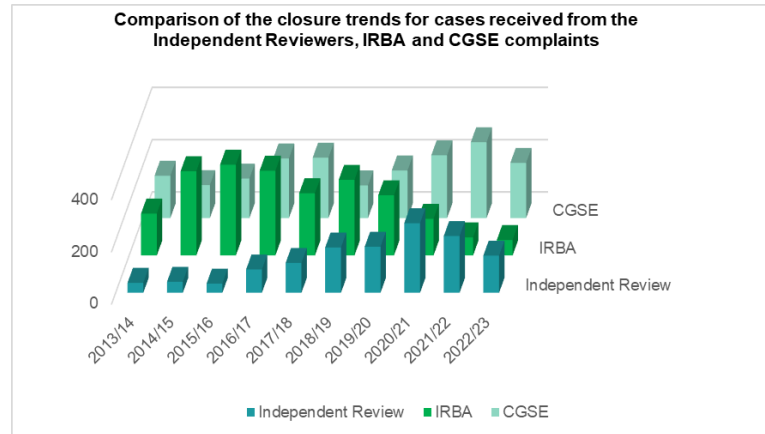


Table B6-6: Comparison between the statistics of independent review, IRBA and CGSE cases

	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	TOTAL
RECEIVED CASES											
Independent Review	38	42	35	89	114	173	176	267	226	191	1351
IRBA	245	348	358	292	251	289	240	160	91	96	2370
CGSE	281	126	151	228	231	125	184	288	452	247	2313
CLOSED CASES											
Independent Review	38	42	35	89	114	173	176	266	217	142	1292
IRBA	160	322	347	324	238	289	230	140	69	59	2178
CGSE	162	126	151	228	231	125	182	240	290	211	1946
CoR137.1 INVESTIGATIONS											
Independent Review											N/I
IRBA											N/I
CGSE		40	28	61	28	39	91	68	27	85	467
COMPLIANCE NOTICES											
Independent Review			1				5	1	3	4	14
IRBA	13	66	31	33	35	18	14	13	6	4	233
CGSE		1	2	2	7	4		13	4	15	48
COMPLIANCE CERTIFICATES											
Independent Review										3	3
IRBA		1	2	1					1		5
CGSE				2	2	2		1			7
COMPANIES TRIBUNAL OBJECTIONS											
Independent Review											N/I
IRBA			2	2	2	1	2		2		11
CGSE		1							3	1	5
MATTERS REFERRED TO THE STATE ATTORNEY											
Independent Review											N/I
IRBA					21						21
CGSE					2		2	10			14
ADMINISTRATIVE FINES - COURT ORDERS GRANTED											
Independent Review											N/I
IRBA						3					3
CGSE											N/I
ADMINISTRATIVE FINES - SETTLEMENT AGREEMENTS											
Independent Review											N/I
IRBA									2		2
CGSE									1		1
MATTERS REFERRED TO THE NPA											
Independent Review											N/I
IRBA											N/I
CGSE				1							1

PART C: CHALLENGES, INITIATIVES, AND IMPACTS



7. CHALLENGES

7.1 Challenges inherited from CIPRO

In addition to the demand of executing its new functions as envisaged by the 2008 Companies Act, the CIPC also had to deal during the first few years of existence with a legacy of poorly maintained ICT infrastructure, organisational stagnation, low employee morale, poor service delivery, customer dissatisfaction and the negative publicity that damaged the organizational reputation of its predecessor, CIPRO. Since its establishment in May 2011, the CIPC has therefore faced several challenges, and particularly a dual strategic challenge, namely:

- ❖ **A transactional challenge** - to deliver a faster, more accurate, reliable, and secure manner to register companies and intellectual property rights, to safeguard the integrity of data and to enable responsive access to requests for information. This required the re-engineering and integration of business processes, IT enablement of workflows and information management, training and development of competent people, and the development of customer-centric access, communication, and service delivery channels; and
- ❖ **A transformational challenge** - to add greater value to entrepreneurs through enhanced products and services, a range of easily accessible channels as well as ongoing communication and engagement with segmented customer communities. Furthermore, to positively impact on good governance in South Africa, the Commission had to create a culture of voluntary compliance with legislation and build the required capabilities to be able to deliver on the new components of the CIPC mandate.¹³³

These challenges included delivering on the CIPC's new regulatory functions, the need to promote voluntary compliance, initiate and investigate contraventions of the Act, monitor compliance with financial reporting standards and promote the reliability of financial standards.¹³⁴

7.2 Capacity constraints

During 2017/18 the CIPC was found to be lacking in a few core capabilities for example:

- ❖ Unavailability of structured data, e.g., most AFS were received in PDF format.
- ❖ Data analytics capabilities.
- ❖ Case management systems.¹³⁵

It was reported during 2019 that the CIPC still lacked a few core capabilities and skills which would assist the Commission in its efforts to remain compliant with the relevant Acts, for example:

- ❖ Advanced International Financial Reporting Standards (IFRS) skills.
- ❖ Advanced investigative and regulatory skills.
- ❖ Data analytic capabilities.
- ❖ Case management systems (still manual).¹³⁶

CGSE experienced several challenges due to a lack of staff to perform their expected duties. During 2021, the unit only had nine (9) investigators to monitor 5 million corporate entities. Due to a declining number of enforcement staff, the number of complaints received by the remaining staff increased. The teams are further not consistent in executing all the functions they need to perform, and as a result the unit concentrated mostly on enforcement/investigations and Corporate Governance.¹³⁷

7.3 Technology/Automation constraints

Although CIPC has since its inception embarked on a major overhaul of its processes, and introduced automated processes and systems through its eFiling and eServices interfaces, several challenges remain due to CIPRO's initial information databases being unreliable and inaccurate, and its automated systems based on disparate legacy systems that did not support CIPC's efficiency and effectiveness objectives.¹³⁸ For example, before the introduction of XBRL, reviewing AFS and monitoring the compliance thereof was mostly a manual process due to the AFS being submitted via email in PDF format. Accordingly, it was difficult to determine which companies have submitted the AFS as required in terms of Section 30, when the issue date was and whether the submission was compliant with the requirements of Regulation 30.¹³⁹

Investigators at CGSE and CCDD still do not have access to all the systems and databases of CIPC. This affects investigations in terms of the time that it may take to gather all the needed information and documents, and negatively impacts on the effectiveness of the actions. For example, even simple information such as the current contact details for directors, may not be readily available or updated on the older systems that the investigators have access to. The investigators also do not have access to company documents such as the Memorandum of Incorporation (MOI) and cannot therefore check whether certain requirements as stipulated in the MOI, for example the voluntary audit of financial statements, are adhered to.

Case administration is still mostly a manual process, and the respective registers are kept in the form of Excel spreadsheets. Investigators may not always have access to the most recently updated register to check if a company is a repeat offender or not, and the registers were not consistently updated with the closure dates and reasons over previous years. Case documents are mostly stored on the stand-alone individual user desktops of investigators. The lack of integration of systems and information therefore makes investigations both difficult and inefficient. Information about issued Compliance Notices, Compliance Certificates and Companies Tribunal objections were also not kept in a consistent manner. Consequently, the outcomes of investigation findings are not always known which makes it difficult to measure the real impact of enforcement activities.

7.4 Enforcement coordination

The Organisation for Economic Cooperation and Development (OECD) indicated that the coordination of investigations and the sharing of information are among the biggest challenges that regulators face. Although dialogues, inter-agency meetings and other methods of cooperation may reduce problems, different enforcement authorities may have different priorities or methods of achieving their aims. This may lead to failure or delays in detection and enforcement. For example, cases involving fraud must be dealt with by the police within a range of numerous priorities that may hamper the investigations' effectiveness.¹⁴⁰

During 2021, it was reported that although the CIPC may be aware of the abuse of companies such as company hijackings or directors manipulating shares, the Commission showed only a limited understanding of how companies are abused for money laundering purposes. In practice, the CIPC did not consider or determine any Money Laundering/Terrorist Financing (ML/TF) risks at the time of registering the legal persons and seemed unaware of any specific cases where companies had been abused for money laundering.¹⁴¹

Law enforcement agencies and prosecutors may access information directly from the CIPC through requests, but the complexity of the request may influence the response time for providing the information. The SAPS, FIC, SARS, and the NPA also have direct access to the CIPC's database, although they do not use it often, preferring to get information directly from the CIPC for use as evidence. Certain information was only made available via the website from 2016, and information on companies registered before that must be searched for manually. The time it takes to receive

the required information, and the extent to which the information is kept accurate and reliable, poses challenges to other agencies and regulators.¹⁴²

Enforcement coordination internally within the CIPC is also problematic, resulting in an inconsistent follow-through on investigations. Most teams or departments within the CIPC operate in isolation without actively sharing information and resources or collaborating across organizational boundaries. Business units function as separate entities rather than interconnected parts of a larger whole. Each team focuses on its tasks, goals, and priorities without considering the organization's broader objectives. This siloed mindset creates barriers to effective communication, knowledge exchange, and collaboration. There is a lack of information sharing between departments, resulting in a limited understanding of what other teams are working on. This lack of transparency can lead to duplicated efforts, misaligned objectives, and missed opportunities for synergy.¹⁴³ For example, the delinquent director register is kept by a different department from the Enforcement and Compliance business unit, and for the purpose of preventing persons who has been declared as delinquent directors from registering new companies. The follow-through regarding directors that were found to be delinquent from investigations are uncertain as it is not always known whether the delinquent director register has been updated with the relevant names or not.

It has been mentioned already that investigators at the CIPC do not have access to the case files and documents from previous investigations by other investigators due to the lack of an integrated automated case management system. Furthermore, the guidance and step-by-step documents that are published on the website to assist customers on performing transactions on the CIPC's eServices platform, are not always updated. Some contain outdated information, for example the contact email addresses of personnel who have resigned or retired or who have since moved to different departments. The documents are also not always created in a collaborative manner and may contain wrong or outdated information on processes which may create problems for personnel in other departments when they must deal with queries from customers.

7.5 Lack of prosecution powers and dissuasive sanctions

A country review during 2021 by the International Monetary Fund (IMF) questioned whether effective, proportionate, and dissuasive sanctions have been applied against persons who failed to comply with information requirements. Although the CIPC shared

information about investigations into non-compliance with the Companies Act, the cases which related specifically to non-compliance with information requirements were not identified. Where investigations had resulted in the CIPC issuing compliance notices and the companies addressed the violations, the CIPC had closed the cases without imposing any fines or other penalties. Where a company had failed to file returns in two successive years, the CIPC moved to strike it from the register as an administrative measure. Failure to file annual returns was highlighted by the CIPC as a main compliance violation, however it seems like deregistration alone is not dissuasive enough and that the period of two years prescribed by the law is too long to strike off delinquent companies.¹⁴⁴

As with some regulators in other jurisdictions, the CIPC was not granted powers to prosecute. The Commission is obliged to work through public prosecutors, who may lack in-depth knowledge about the intricacies of corporate laws or have competing claims on their time.¹⁴⁵ The CIPC also cannot impose administrative fines directly for any violations of the Companies Act but must utilize the cumbersome process of referring such cases to the court.¹⁴⁶

7.6 The Covid-19 pandemic

Covid-19 affected many companies' liquidity status and their ability to finalize the timely preparation of AFS and to comply with other requirements as prescribed in the Companies Act such as the holding of Annual General Meetings (AGMs). Since AFS were filed online, COVID-19 did not affect the filing capability and the quality of the content filed, but it had an influence on the volume of filings. The volume was affected because of the inability by companies to hold AGMs, as well as delays by auditors in finalizing auditing processes within prescribed time limits due to lockdown regulations. To ease companies' burden of doing business during the lockdown, certain extensions relating to Annual Return penalties and the filing of AFS or FAS were given. The *CIPC Notice 21 of 2020* published on 15 April 2020, communicated that "*Filings which falls within the national lockdown period, would be extended until after the national lockdown ceases or until CIPC communicates otherwise*". Some companies whose non-compliance arose from financial years prior the Covid-19 pandemic, however incorrectly attributed their non-compliance to the pandemic economic situation. This had to be addressed through investigations, and the issuing of compliance notices where warranted.¹⁴⁷

7.7 Stakeholder participation

Stakeholder participation is critical for certain business processes to function properly. Many of the challenges surrounding stakeholder participation are linked to CIPC's engagement with customers and stakeholders, and the Commission's awareness and education efforts. For example, to allow Regulation 29 to serve the purpose it was intended for by the Companies Act and to ensure that the CIPC's mandate is carried out optimally, the public and accounting officers must be aware of the independent review disclosure requirements around reportable irregularities. Initially, few reportable irregularity reports were forthcoming from the independent reviewers. Investigators also experienced challenges when the independent reviewers failed to adhere to the procedure set out in Regulation 29. They did not always submit a Second Report, they did not give any indication that they had even investigated the reportable irregularity, and many reports did not include the contact details for the entity.¹⁴⁸

The introduction of the Compliance Checklist spiked confusion among registered auditors as to its effects on their usual reporting obligations. The IRBA engaged the CIPC on the checklist and consensus was reached that prior declaration of any non-compliance with the provisions of the Companies Act on the CIPC checklist will not absolve an auditor of his/her obligations to report any identified reportable irregularities in line with Section 45 of the APA. Therefore, a company's appointed auditor must still consider whether any non-compliance declarations made to the CIPC constitute reportable irregularities, and report those areas of non-compliance to the IRBA, while referencing the prior declaration to the CIPC.¹⁴⁹

Another example relates to the filing of AFS in XBRL format. It was reported that demand for further deliberations around the iXBRL financial reporting dynamics continues to grow, with companies and professional bodies requesting increased hand-holding engagements and platforms to voice their challenges, to seek clarity on matters of interpretation and improve their compliance. The CIPC is therefore considering various options to engage industry more meaningfully and granularly to achieve its objectives while reducing the administrative burdens of compliance.¹⁵⁰

CIPC's recent implementation of a new process for director amendments sparked discussions and concerns within the private sector due to the challenges experienced by stakeholders.

Secretarial practitioners managing administrative tasks for large, listed companies have reported a noticeable slowdown in successfully lodging amendments and have noted that the process is now more complex and time-consuming. Several factors contributed to this, such as incorrect contact details in the CIPC database, directors not receiving OTPs or failing to respond within the specified time limit, and the Department of Home Affairs' systems being offline frequently. The CIPC's ongoing efforts to streamline processes to adhere to international requirements, although commendable, sometimes creates persistent frustration within the private sector. Secretarial practitioners and other stakeholders lament the lack of engagement and consultation when government entities introduce systems or processes directly affecting their businesses. The private sector, especially secretarial practitioners, therefore, demand better engagement and collaboration to address these concerns and practical challenges.¹⁵¹

8. PROJECTS AND INITIATIVES

8.1 Proactive drives and surveillance sweeps

Several targeted proactive investigations were conducted in relation to contraventions of the Companies Act. These investigations targeted identified companies through the State Capture Commission Report, as well as by way of XBRL submissions, and the Companies Tribunal decision outcomes.¹⁵²

8.1.1 State-owned companies market test

Globalization requires that businesses in South Africa be viewed as credible, well-regulated entities with world class governance standards. To expand its governance capability and regulatory functions in this regard, the CIPC performed a market test during 2014/15 of a cross section of Schedule 2 State Owned Companies (SOCs) to determine their level of compliance with the Companies Act. The market test and other interventions sensitised the boards of SOCs to their responsibilities in terms of the Act, and the consequences should they fail to adhere. An indirect result is greater shareholder activism from the shareholder representatives of these SOCs. CIPC will continue to liaise closely with the Auditor General's office and various inter-ministerial governance units to strengthen compliance at board level of the different SOCs that fall within their portfolios and to recommend any enforcement action if the need arises.¹⁵³

8.1.2 Audit service provider market test

During 2014/15 the CIPC undertook a proactive market test to determine what mechanisms audit service providers have put in place in response to the auditor rotation requirements of Section 92 of the Companies Act. Many audit service providers (60%, 143 out of 238) advised that they have mechanisms in place to manage the rotation of auditors as per Section 92 of the Act. A significant percentage (19%, 45 out of 238) however advised that they were not aware and/or uncertain of what this provision of the Act entailed. This was a cause for concern as it meant that compliance would be limited but also that the CIPC had to spend more resources on education and awareness. About 21% (50 out of 238) of the audit service providers advised that this provision was not applicable to them. In conclusion, the market test indicated that although most audit service providers have mechanisms in place to ensure that they comply with Section 92 of the Act, the CIPC should endeavour to explore how to raise further awareness within the broader audit community in this regard.¹⁵⁴

8.1.3 Social and Ethics Committee market test

During 2014/15, CIPC also conducted a test on a segment of the market, namely listed public companies, which are required to have a Social and Ethics Committee (SEC) as per Regulation 43 read with Sections 72(4)-(10) of the Companies Act, to determine the level of compliance. Most companies (96%, 252 out of 263) confirmed compliance with the provisions which indicated substantial compliance by listed public companies in establishing Social and Ethics Committees. A minority (4%, 11 out of 263) indicated that they were registered as external companies and were therefore of the view that Regulation 43 was not applicable to them. The CIPC therefore had to seek a legal opinion on whether an external company listed on the JSE is required to have a Social and Ethics Committee.¹⁵⁵

During 2016/17 letters were sent to twenty-nine (29) listed and State-Owned companies to ascertain their compliance with the legislative requirements in respect of the establishment of Social and Ethics Committees. They were reminded of the requirements and were requested to provide specific information as proof of their compliance. Sixteen (16) JSE Alt X companies and five (5) SOCs responded. A review of the responses received confirmed substantial compliance with Regulation 43(4) and proof was provided thereof. About the other functions, the companies have attempted to incorporate and report on these as it relates to their specific company. Compliance with the specific

requirements of Regulation 43 is therefore an ongoing process and will be monitored by the CIPC as and when required. Moreover, an open letter in respect of the role and responsibilities of the Social and Ethics Committee was published in BusinessLive.co.za in March 2017.¹⁵⁶

8.1.4 Director remuneration and properly constituted audit committees

In 2015/2016, the CIPC undertook high-level interactions on the director remuneration disclosure and properly constituted audit committee requirements of the Companies Act. With regards to the director remuneration disclosures, CIPC engaged with twenty (20) of the top forty (40) publicly listed companies on the JSE, to determine their level of compliance with Sections 30(4)-(6) of the Act. CIPC furthermore had engagements with the PIC, JSE and IRBA on issues pertaining to director remuneration and properly constituted audit committees. The CIPC became aware that certain companies have appointed improperly constituted audit committees which in turn implies that their auditors' appointments were invalid as well. An evaluation of the responses received from nineteen (19) of the JSE listed companies and the interactions with the PIC, JSE and IRBA indicated basic compliance with the remuneration disclosure provisions of the Act. There is however still room for improvement and the CIPC will engage with the relevant entities that might be able to assist in influencing improved disclosure on companies' remuneration policies. The Commission also provided input to the IRBA regarding the issue of improperly constituted audit committees, specifically noting that the composition of an audit committee must be correct to ensure that the auditor is duly appointed.¹⁵⁷

8.1.5 Annual Return fee surveillance sweep

Monitoring of compliance with the provisions of the Companies Act in respect of annual returns was undertaken by the Enforcement Unit during 2016/17. During the surveillance sweep, the CIPC identified more than fifteen (15) listed companies that were either under-disclosing or not disclosing the proper annual turnover values and therefore were not paying the correct annual return fees to the CIPC. The implicated companies undertook to remedy the transgression. The CIPC viewed the breach as material, and therefore requested the companies to inform the market by issuing a Stock Exchange News Service (SENS). Failure to do so would result in the CIPC publishing the names of these companies. Only one company issued a SENS, and

the names of the other companies were subsequently published on the CIPC website.¹⁵⁸

8.2 Investigative tools

The formulation of two **investigation procedure manuals** by the Enforcement units, improved the uniformity and quality of investigative and enforcement activities at CIPC. The manuals seek to describe the terms of reference and the applicable procedures of the investigation function and were primarily intended as practical guides for the conduct of investigations by all members of CGSE and CCDR who are responsible for conducting investigative activities under the Act.¹⁵⁹

The development of **process flows** for the core functionalities of the CCDR and CGSE units have further enhanced the CIPC's capability to effectively and efficiently monitor, investigate and enforce corporate compliance matters. Processes outline how organisational activities are conducted, breaking it down to logical, sometimes repeatable steps to achieve distinct business tasks. Processes streamline organisational activities to ensure optimal use of resources, quality, consistency, and reliability, as well as accountability. The continued improvement of business process management allows the CIPC to be an agile, efficient, effective, and compliant regulator, while facilitating the transfer of business knowledge and the practice of continuous improvement.¹⁶⁰

The introduction of **In-line eXtensible Business Reporting Language (iXBRL)** as a digital reporting mechanism in July 2018 not only simplified AFS filing but further enhanced CIPC's investigative capabilities. The CIPC initiative was the first major roll-out of XBRL in South Africa, and not only paved the way for other regulators to follow suit but completely changed the landscape of financial reporting in the country.¹⁶¹ The CIPC's back-end regulatory processes were further automated via **Workflow and Business Intelligence** reporting implemented on the XBRL data, and this vastly improved both the efficiency of AFS compliance monitoring and the Commission's overall regulatory effectiveness. The Business Intelligence system of iXBRL has been used as a tool to identify companies for targeted enforcement, for example, by proactively taking action against public companies that filed FAS instead of AFS, as well as those companies that declared a turnover of more than R350 million but did not file AFS.¹⁶²

During 2019/20, the CIPC rolled out a **Compliance App** which enabled the further systematic and proactive observation of companies by the

Enforcement unit. The Compliance App identified specific mandatory compliance provisions that companies need to comply with according to a Compliance Checklist. The Checklist also served as a useful educational and guidance tool for the corporate governance duties and responsibilities of company secretaries and directors in terms of the Companies Act. Completion of the Compliance Checklist in the App was voluntarily between 1 September 2019 and 31 December 2019. From 1 January 2020, it became mandatory for companies to use and complete the information on the App via a hard stop on Annual Returns. Guidelines on the use of the App were placed on the CIPC website and outlined in a media statement. The completion of the annual Compliance Checklist ensures that the CIPC registers are updated accurately so that the CIPC may be equipped with reliable information for analysis into compliance and industry trends.¹⁶³ A statistical analysis report published on the responses received over 2019 to 2022 indicates a year-on-year improvement in companies' levels of compliance.¹⁶⁴

During 2020/21, the CIPC adapted well to conditions presented by the Covid-19 pandemic and had minimal disruptions in its operations because it leveraged its existing technological capabilities and IT assets to offer continued services through **online virtual platforms**, supported by a telecommuting strategy and development of new ways of working which enabled staff to continue working remotely. This strategy proved to be successful with productivity being steady and service delivery standards met and even exceeded across all operations.¹⁶⁵ The strategy specifically enabled the Compliance and Enforcement units to further their compliance monitoring activities and investigations through virtual boardroom visits and director meetings held via MS Teams.

8.3 Forced Compliance initiative

During 2016/17 the CIPC rolled out a new functionality on the Electronic Records Management System (ERMS), to force companies to comply with compliance notices issued by the CIPC. Companies who fail to comply with any issued compliance notice will see the following status on their disclosure certificate: *"Failed to Comply with a Compliance Notice."* As shown in **Table C8-1**, the new status is visible to any person who comes across the information relating to such a non-compliant company.¹⁶⁶

Initially sixteen (16) companies had their compliance status changed accordingly on the ERMS system. The functionality was implemented to increase awareness to the public and industry

on the need to comply with issued compliance notices. It assists in exposing the compliance status of a company to any third party who is doing or wants to do business with a non-compliant party. Awareness of the forced compliance status achieves improved levels of compliance because defaulting companies now take note of compliance notices issued to them. It is hoped that this enhancement to the system will contribute towards increased levels of transparency and that more entities will act to correct non-compliance once a compliance notice has been issued.¹⁶⁷

Table C8-1: The status information shown on an entity's Disclosure Certificate¹⁶⁸

No.	Status Field	Description of Status	Colour Indicator
1	Compliance Status	"Compliant"	Green
2	Compliance Status	"Failed to Comply with Compliance Notice"	Red

8.4 Cold Case Register and State Attorney Referral Project

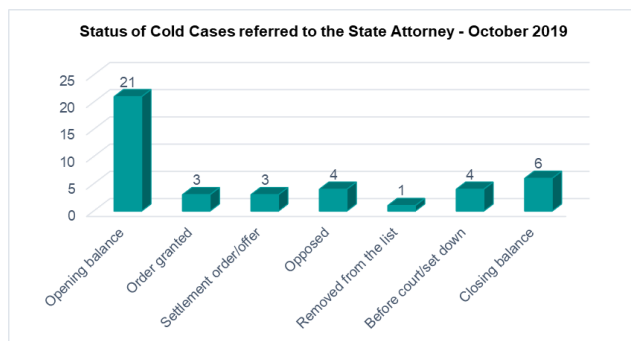
During the 2016/17 financial year, a Cold Case register was established as an enforcement strategy to record non-compliant entities that did not adhere to an issued compliance notice. The CCDR unit met with the Specialized Commercial Crimes Unit of the NPA to develop a business process to deal with these cold cases for referral to the office of the State Attorney for enforcement of administrative fines in terms of Section 175 of the Act.¹⁶⁹

From the initial 50 cold cases that were identified from investigations on auditing reportable irregularities between 2013 to 2016, 21 were selected for referral to the State Attorney by 2017 based on the following selection criteria:

- ❖ The period the case has been open for after the issuance of the compliance notice based on the company's financial year.
- ❖ The size of the entity (number of employees, economic impact).
- ❖ Social impact of the entity (the brand and charity works).
- ❖ Rate or occurrence of the reportable irregularity (how often do they get reported).
- ❖ The director(s) status in the company and any other related company.
- ❖ Whether the company is a subsidiary, holding, ultimate holding or stand-alone company.
- ❖ The communication rate between the investigator and the company.
- ❖ Acknowledgement of the compliance notice.
- ❖ The annual turnover of the company.
- ❖ Compliance with other Companies Act requirements.

- ❖ Has the company ever wanted to comply with the compliance notice?
- ❖ The industry sector of the company.
- ❖ The financial year the company falls in.
- ❖ Non-compliance with Sections 30 and 45 of the Companies Act.¹⁷⁰

Figure C8-1: Status of cold case matters referred to the State Attorney by October 2019



By October 2019 three matters have been granted court orders in favour of the CIPC. For these a forensic accountant had to be appointed to determine the exact administrative fine that the companies had to pay. A further three matters had pending settlement offers.¹⁷¹

Because of the COVID-19 pandemic, there was a slow movement of these matters during 2021/22. The office of the State Attorney experienced problems with their internal ICT systems, which were not functional for the month of September of that year, and hence matters could not be reconciled nor scheduled for further action. As a result, the CIPC experienced a challenge in following up on long outstanding cases and receiving feedback from the State Attorney's office.¹⁷² Overall, cold case matters may take long to finalize as their conclusion is dependent on the administration of the courts and other relevant forums.¹⁷³

8.5 Stakeholder engagements and cooperation

The skills and expertise of the CIPC, as well as the information and data sharing capabilities on AFS and other basic information from the CIPC, may contribute to building strong cases for successful prosecutions in collaboration with the NPA, SIU, Hawks and other law enforcement agencies and regulators. The CIPC can take advantage of the preparedness of the NPA and JSE to collaborate on matters of non-compliance, and such cooperative efforts may further assist in mitigating the prevailing disparate efforts in dealing with non-compliance with the Companies Act. Pursuant to the provisions of Sections 188(3) and (4) of the Act,

which provide for cooperation between the CIPC and other regulatory authorities, sound stakeholder relationships must be established with the BBEE Commission, NCC, Competition Commission, Department of Justice, Office of the State Attorney and other regulatory authorities or agencies. Written agreements should be concluded where possible, to allow for a platform to refer cases which fall outside the mandate of CGSE and CCDD to these relevant regulatory authorities. Since an investigator's work may sometimes include offences as referred to in Sections 213-215 of the Act or other criminal allegations, it is imperative that the CIPC facilitate interaction with the SAPS and NPA so that reports or referrals may be prepared in accordance with the expectations of these authorities.¹⁷⁴

To implement a smooth, streamlined, and efficient process for the timely and correct reporting and investigation of independent review reportable irregularities, it was imperative that accounting practitioners and auditors familiarise themselves with the Regulation 29 reporting process.¹⁷⁵ To implement and establish an effective reporting procedure and performance of independent reviews, the CIPC exercised several stakeholder awareness activities. General correspondence was initiated with professional bodies to notify them of the requirements in terms of the Act, and to provide inputs and receive comments for the creation and finalization of a process flow for quality assurance and standards. Practice guidelines and CIPC Notices were drafted and published on the CIPC website, and report templates were published and circulated to relevant institutions. Several educational and awareness workshops were hosted by the CIPC to disseminate information and create awareness to relevant stakeholders in the accounting and auditing industry. These were well received by the institutional professional bodies responsible for accounting officers. Speakers from several relevant institutions made informative and interesting presentations at the workshops, which provided a holistic and comprehensive insight into the area of independent review.¹⁷⁶

Change management engagements were further an important aspect of the implementation of the XBRL programme to create both awareness and buy-in with internal and external stakeholders. Through partnerships with accounting professional bodies and software service providers, as well as sponsorship from the highest level of government through the Minister of Trade, Industry and Competition, awareness of the benefits of iXBRL was achieved.¹⁷⁷

During 2017/18 and due to a surge in the reporting of corrupt business practices, the CCDD unit convened meetings with SARS employees administering Section 12J applications. The meeting on 1 March 2018 engaged on the advantages and disadvantages of this type of business vehicle to raise capital in relation to Chapter 4 of the Companies Act. A separate meeting with a company advocating the use of venture capital companies (VCCs) was held on 14 February 2018. The agenda revolved around the need to clarify the prospectus disclosure requirements relating to minimum subscriptions, marketing of shares, tax implications, small investor base, investment-related risks, and the availability of secondary markets to raise capital for various projects. Both meetings provided clarity on how VCCs may be used to raise capital and the sunset clause on their use. Furthermore, a SARS-published guidance document which included close corporations as an eligible type of entity, was raised for correction.¹⁷⁸

The CIPC furthermore regularly participates in and engage with various international bodies such as the Financial Action Task Force (FATF) and IFRS Foundation. This provides an opportunity for South Africa to make relevant inputs into international discussions, policies, and conventions.¹⁷⁹

8.6 State Capture project

During 2022/23, the CIPC started to review the compliance of companies implicated in the State Capture Commission's report as well as the interconnectedness of directorships. Several private companies and state entities were identified as being non-compliant with the Companies Act, and therefore inspectors from both the CCDD and CGSE units were appointed to conduct proactive investigations into these cases.¹⁸⁰

The CIPC processed complaints concerning thirteen (13) former directors of Eskom. Cases against the remaining directors were planned to be registered with the CIPC by 31 December 2023. The CIPC further engaged with the Department of Public Enterprises (DPE) and the SOCs that fall within the DPE portfolio with a view of coordinating potential delinquency applications. A roadmap was agreed upon and subsequently the CIPC has received a set of facts for a potential delinquency application from one of the SOCs. The CIPC engaged with its Counsel on the merits of the case with a view to bringing an application. The CIPC is furthermore enforcing the Corporate Compliance Programme for all entities including SOCs via the Social and Ethics Committee requirements of Regulation 43(5) and verifying this via the electronic Compliance Checklist.¹⁸¹

The CIPC has issued compliance notices to three (3) of the twenty (20) private sector entities under investigation for state capture activities, namely **Swissport (Pty) Ltd**, **Homix (Pty) Ltd** and **JM Aviation (Pty) Ltd**. A 40-day notice period expired in July 2023 and the cases have been handed over to the State Attorney for legal action. Other companies are still being pursued with continued engagements with the companies as part of the process, while some entities have since been either liquidated or dissolved or have satisfactorily complied.¹⁸²

Several individuals are also being pursued for further legal action. The case against an accountant has been initiated through the State Attorney's Office for further legal action, and counsel has been appointed. The CIPC is also awaiting more information for further action against an auditor.¹⁸³

8.7 Beneficial Ownership project

8.7.1 Background and implementation

South Africa, as a member of G20, is bound by the Financial Action Task Force (FATF) requirements. G20 is an international forum for the governments and central bank governors from nineteen countries and the European Union (EU). The FATF keeps watch on global money laundering and terrorist financing and sets international standards to prevent these illegal activities and the harm they cause to society. Since 2015, South Africa endorsed the G20 countries' High-Level Principles on Beneficial Ownership Transparency (BOT) and committed the country to take concrete action to implement these principles to improve the effectiveness of its legal, regulatory, and institutional frameworks for Beneficial Ownership Transparency. Cabinet approved an Inter-Departmental Committee in 2016, under the chairmanship of the Department of Public Service and Administration (DPSA), and of which the CIPC has been an active member.¹⁸⁴ As the regulator of legal persons, the CIPC was expected to assist in the value chain by collecting relevant data on beneficial owners to assist law enforcement agencies. The CIPC is therefore a key player in ensuring delivery of this competence and capability.¹⁸⁵

In October 2021, the CIPC participated in the FATF country assessment. Based on the findings contained in the Mutual Evaluation Report, it was determined that South Africa should improve its mechanisms to ensure that accurate and verified beneficial ownership information is available timeously to the competent authorities. Law enforcement authorities must have the power to gain direct and timely access to ownership and

control information of legal persons and entities so that they may have a greater capability to thoroughly and effectively investigate financial crimes. This should also enable the CIPC to impose administrative sanctions and penalties directly for non-compliance with beneficial ownership information and filing requirements. The country was subsequently placed onto the FATF “Grey List” which requires South Africa to have increased monitoring due to the various strategic, regulatory, and compliance deficiencies that were identified.¹⁸⁶

In response, the CIPC issued an action plan accordingly, and was actively involved in the promulgation of the General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Act 22 of 2022, and the Companies Amendment Regulations 2023. The latter allowed the CIPC to establish a Beneficial Ownership (BO) Register on its e-Services platform from the 1st of April 2023 to enable corporate entities to submit details regarding their beneficial ownership to the CIPC. From the 24th of May 2023, submission of BO information to the CIPC became mandatory for all entities.¹⁸⁷

The purpose of the Beneficial Ownership Register is to ensure that companies, including non-profit companies and close corporations, keep record of the natural persons who own or control the legal entity, thereby providing the CIPC with a detailed mechanism to maintain accurate and updated beneficial ownership information of complex corporate structures to enable the swift identification of ownership by law enforcement authorities and regulatory bodies.¹⁸⁸ The individuals who ultimately benefit from the operations of corporate vehicles can thereby be readily identified by these agencies to combat money-laundering or the financing of terrorism through the misuse of such legal persons.¹⁸⁹

The CIPC started its implementation efforts timeously by hosting a breakfast seminar in March 2023 to introduce the implementation of the regime. All relevant stakeholders were invited and formed part of this session. A demo video of the system was played and various aspects of the BO implementation and FATF grey listing were conveyed. Various communications relating to BO have been actively advocated throughout the CIPC’s social media platforms. Guidance documents in the form of step-by-step guides were published on the CIPC website. Several awareness webinars and virtual information sessions have been held to inform stakeholders on the legalities and the required process. The webinars targeted the general public and CIPC

customers, as well as law enforcement agencies such as the SAPS, the NPA and its Commercial Crimes Unit, Priority Crimes Specialised Investigation (PCSI), and stakeholders from the banking, insurance and accounting industry sectors such as the Prudential Authority, FSCA, Banking Association of South Africa (BASA), Turnaround Management Association of Southern Africa (TMA), Computershare, the Stock Brokers Association of South Africa, STRATE, SAIBA, SAICA, SAIPA and the B-BBEE Provincial Stakeholder Forum. In the meantime, various deployment modules and amendments to the system were implemented in phases. From the 1st of April 2024, the Annual Return hard stop will be rolled out, which will mean that entities which have not yet complied with the BO filing requirements will not be able to file their Annual Returns.¹⁹⁰

8.7.2 CIPC’s BO enforcement efforts

The Commission commenced with its Beneficial Ownership Enforcement Drive from 1 October 2023. A customer notice (*CIPC Notice No 53 of 2023*) was issued to the market that resulted in a substantial increase in the number of BO filings. As illustrated in **Table C8-2**, the drive involved the engagement of entities which were supposed to file their beneficial ownership information due to either being newly registered or having their anniversary date after the promulgation of the regulations.¹⁹¹

Table C8-2: BO proactive investigations of entities that failed to submit BO information

BO PRO-ACTIVE INVESTIGATIONS FOR FAILURE TO FILE BO	2023/24
Allocations	66
Closed	10
Pending	50
CoR137.1 Notices to investigate	6
Compliance Notices	5
Compliance Certificates	1
Deregistered	1
Voluntary liquidation	1
Entity types:	
PTY LTD	57
LTD	0
CC	4
INC	1
NPC	4

Table C8-3 shows that the other part of the enforcement drive entailed conducting site inspections or boardroom visits to entities which have filed their BO information but where the back-office review team found the submitted information to be deficient or non-compliant, or where certain anomalies were picked up. The entities were then given a chance to address the anomalies or

deficiencies through the BO amendment system which was rolled out in December 2023. Most of the engaged entities have since then heeded the call and filed the BO amendments as directed.¹⁹²

Table C8-3: Statistics of BO site inspections done during Q3 of 2023

BO INSPECTIONS	2023/24
Allocations	8
Closed	1
Pending	4
Amended/refiled	4
Missing info on security register	5
Improper certification	1
Non-compliant mandate	2
Entity types:	
PTY LTD	6
CC	1
External company	1

The Enforcement unit intensified its efforts as communicated to the market through a customer notice issued in February 2024 (*CIPC Notice No 5 of 2024*). A few formal investigation appointments (CoR137.1) and compliance notices were issued. Non-compliance has a negative effect on entities as their disclosure certificates will be endorsed to reflect that they have Failed to Comply with a Compliance Notice. Entities which fail to file their BO information will also not be able file their annual returns as of April 2024 and they run the risk of being deregistered accordingly.¹⁹³

Table C8-4: BO Investigations referred to the Enforcement Unit

BO INVESTIGATION REFERRALS	2023/24
Allocations	3
Closed	1
Pending	2
Missing info on security register	1
Failure to file BO register	1
Missing or incorrect BO information	1
CoR137.1 Notices to investigate	1
Entity types:	
PTY LTD	2
CC	1

8.8 Sustainability Reporting Standards

During June 2023, the International Sustainability Standards Board (ISSB) issued the International Financial Reporting Standards (IFRS) Foundation Sustainability Disclosure Standards, IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, and IFRS S2 Climate-related Disclosures. The ISSB standards require companies to disclose sustainability- and climate-related risks and

opportunities across their value chains and will be effective for annual reporting periods beginning on or after 1 January 2024. SAICA, in collaboration with the JSE, hosted the South African leg of the global launch of the standards on 29 June 2023. CIPC delegates attended the launch and the Commissioner, Adv Rory Voller, participated in the panel discussions.¹⁹⁴

The CIPC took pro-active action to collaborate with the IFRS Foundation (through the ISSB), accounting and auditing firms and other regulators to carve the way for the potential implementation of the standards in South Africa. The potential implementation of the standards will be informed by the readiness and acceptance of the standards among corporate entities and regulators, inter alia. As part of the change management process, being a precursor for input required to inform policy formulation under the auspices of the Corporate Law, Policy and Research division of the DTIC's Regulation Branch, the CIPC is in the process of drafting a Position Paper to present its preliminary opinion on the potential implementation of the ISSB standards in South Africa. The purpose of the paper will be to outline the options available to adopt a fit-for-purpose localized and domestically relevant sustainability reporting regime for South Africa, which would incorporate all the needs of the relevant stakeholders including government, industry, business, accounting and auditing bodies, regulators, investors, preparers and reporters of sustainability, while being in line with international best practice standards.

In line with the National Policy Development Framework, the CIPC is of the view that robust, iterative stakeholder engagements during policy formulation is crucial as it allows for inclusive participation and input from a wide group of stakeholders that will be affected by a mandatory sustainability regime. With this view in mind, the CIPC hosted an initial three-day **Sustainability Reporting Roundtable Conference** during September 2023 to solicit views from local stakeholders including regulators, professional bodies, audit firms and corporates to scan the landscape and future direction of sustainability disclosures in South Africa. Further engagements, including the creation of Working Groups and a Steering Committee, will be a necessary part of the motions required to inform the most fitting road of travel towards mandatory sustainability reporting.¹⁹⁵

Some of these further engagements include the following:

- ❖ CIPC actively participated in the **ISSB Sustainability Reporting Roundtable** events on 3 November 2023 and 20 March 2024, organized by KPMG and Absa respectively, in collaboration with the ISSB. During these sessions, the CIPC had a chance to engage with and hear the opinions of other regulators and organizations such as the FSCA, Prudential Authority, PAFA, ISSB, IASB, as well as corporate leaders such as Absa, Sasol, and Anglo-American. Further engagements took place throughout 2024.
- ❖ On 22 November 2023, the CIPC organized and hosted the **Pan-African Digital Taxonomies and Sustainability Reporting Symposium** in collaboration with the ISSB and IFRS, to explore the possibilities of Standardized Business Reporting (SBR) by leveraging the IFRS Taxonomy and the ISSB Sustainability Disclosures Taxonomy to streamline reporting and enhance inter-jurisdictional data sharing of financial and non-financial data in the African Continent, in view of the trade opportunities presented by the African Free Trade Area (AfCFTA) Agreement, through digital standards such as XBRL. The symposium was attended by distinguished delegates from African regulators in Mauritius, Ghana, Kenya, and Nigeria as well as presenters from the ISSB, IASB, African Development Bank, the Glasgow Financial Alliance for Net Zero (GFANZ), XBRL International, and the Business Reporting Advisory Group (BR-AG).¹⁹⁶
- ❖ On 29 November 2023, the CIPC organized the **Sustainability Reporting: South Africa's Pathways to Adoption Dialogue**, in collaboration with the JSE and IFRS. This was an inter-regulator event to discuss the regulatory imperatives for the potential adoption and implementation mapping of ISSB's standards. The Roundtable was attended by delegates from the DTIC, FRSC, CIPC, FSCA, JSE, IRBA, ACCA, SAICA and ISSB.
- ❖ On 6 Feb 2024, the CIPC had a virtual **Multi-Stakeholder Engagement on Sustainability Reporting** with local and international bodies (ISSB and UNCTAD) to discuss the efforts from other regulators and their policy focus areas as it relates to sustainability and climate-related disclosures, and the alignment of Sustainable Development Goals (SDGs) in relation to key reportable indicators. The engagement was attended by delegates from the CIPC, National Treasury, FRSC, NBI, UNCTAD, DTIC, SAIBA, FSCA and ISSB.

In order to support early adopters of the ISSB standards and create a predictable runway for smooth voluntary implementation, the CIPC will incorporate the sustainability disclosures taxonomy in its **1 October 2024 taxonomy update**, which is aimed at kick-starting a digital Environmental, Social and Governance (ESG) reporting regime as part of a broader climate change response initiative.¹⁹⁷

9. PROMINENT CASES AND SUCCESSFUL ENFORCEMENTS

9.1 Administrative fines

During 2018, **Citiconnect Communications, Blue Sky Air** and **Sisao Project Management and Procurement**, were reported to the CIPC by their auditors through the IRBA for failure to comply with Section 30 of the Companies Act wherein every company is required to prepare AFS each year within six months after the end of its financial year-end. Compliance notices were issued to the companies and their directors but were ignored. CIPC therefore utilized the provisions of Section 175 which provides for an administrative fine to be issued to a company which fail to comply with the terms of a compliance notice. Notices of motion were issued, and court orders were granted for the payment of administrative fines by the companies.¹⁹⁸ This was considered a landmark victory for CIPC in its application of the enforcement provisions provided for by the Companies Act, and the judgement should raise awareness to all registered companies to adhere to the provisions of the Act. Companies engaged by the CIPC on matters relating to non-compliance must strive to rectify conduct that goes against the high standards of corporate governance and transparency contemplated by the Act.¹⁹⁹

The Commission further pursued enforcement of Section 175 of the Act by making an application to the High Court for an administrative fine to be issued for **Belgacom International Carriers South Africa (Pty) Ltd** to which a compliance notice was issued for continuous non-compliance with Section 30 of the Act. The company in turn filed an objection through the Companies Tribunal to have the compliance notice set aside. The Companies Tribunal ruled in favour of the CIPC and dismissed the review application. Belgacom and CIPC subsequently entered into a settlement agreement to ensure compliance with the legislation. Publication of the settlement agreement created and raised awareness with all registered companies to adhere and comply with the provisions of the Act.²⁰⁰

On 2 September 2021, the High Court ruled in CIPC's favour in a case against **JCI Limited**, the investment and mining firm linked to the deceased and controversial mining magnate, Brett Kebble. The core issue of the case was that the entity did not compile AFS each year within six months of its financial year-end in non-compliance of Section 30(1), and that the AFS were further not audited as required for a public entity in non-compliance with Section 30(2), read with Regulation 27(4). After an investigation, the CIPC inspector found that the entity was in gross violation of the above-mentioned provisions for the period from 2011 to 2017 and issued a compliance notice. JCI Limited initially applied to the Companies Tribunal to review and set aside the compliance notice, but thereafter conceded that it was unable to prepare the required financial statements. The entity consequently concluded a settlement agreement with the CIPC and withdrew its application to the Companies Tribunal. The settlement agreement, a first in terms of Section 173, read with Section 175 of the Act, was made an order of court and inter alia required from JCI Limited to pay an administrative fine of R1,000,000 for non-compliance with the compliance notice, and to convene a shareholders meeting to adopt a special resolution for the voluntary winding up of the entity.²⁰¹ It was suspected that the entity was hopelessly insolvent at least from 2004, and that was the main factor in delaying the release of audited financial statements instead of the technicalities cited by the board. The settlement brought an end to a decades-long saga in which JCI shareholders have been trying to force the firm to produce audited financial statements so that they could ascertain the value of the company.²⁰²

9.2 Auditor conduct

During the 2013/2014 financial year, the CIPC referred a matter relating to the conduct of an auditor to IRBA for action after investigation. IRBA conducted a disciplinary hearing on 12 March 2014. The Disciplinary Committee found the auditor guilty on four charges of improper conduct and imposed the following sanction with respect to each of the four charges:

- ❖ A fine of R100 000, which was suspended until such time as the respondent would be re-registered with the Board, the payment of the fine being a condition for such re-registration.
- ❖ The respondent's name and his firm's name (**Lochner & Associates**) were removed from the register of registered auditors with effect from midnight on 31 March 2014.
- ❖ The respondent could not apply for re-registration before 31 March 2019, and shall

not automatically be entitled to entry onto the register after that date.

- ❖ Upon any application for re-registration the respondent shall have to satisfy each requirement for re-registration which is then applicable.
- ❖ In addition, the respondent was ordered to contribute R500 000 towards the IRBA's legal costs.
- ❖ In respect of publication, the Disciplinary Committee ordered the Board to publish the respondent's name, the name of the firm, the charges and underlying facts, the plea and the sanction imposed in *IRBA News*.²⁰³

9.3 Collection of costs

Following an application in 2017 by the then Chairperson of South African Airways Limited, **Ms Dudu Myeni** in her personal capacity to the Companies Tribunal to set aside a compliance notice, and the Tribunal's subsequent dismissal of her application with costs, the CIPC requested the State Attorney's office to take the necessary action to collect the amount of R200 525.08 for taxation cost from her. On 18 June 2018, the State Attorney informed CIPC that the writ was issued by the Registrar of the High Court on 5 June 2018 and that the document will be sent to the Sheriff of Richards Bay for serving. On various occasions the Sheriff attempted to serve the writ of execution, but Ms Myeni prevented them from entering her home. CIPC then provided the Sheriff with a letter to attempt serving the document again, and should Ms Myeni refuse to open the door, the Sheriff was requested to use the necessary means legally allowed to enter the house to execute the Writ of Execution. The Sheriff subsequently managed to get access to the house and attached some valuables, but it was not enough to cover the cost, and the Sheriff took further action to recover the full amount payable by Ms Myeni.²⁰⁴

9.4 Confidentiality of financial statements

In the matter between CIPC, the Companies Tribunal and **G.U.D Holdings (Pty) Ltd**, the Gauteng High Court ruled in favour of the CIPC to dismiss the entity's claim of confidentiality for the entire contents of their AFS for the financial year ending 30 June 2020. The Commission rejected the claim but the entity took the decision on review to the Companies Tribunal which upheld the review.²⁰⁵ The Court touched on the issue of privacy in terms of the Constitution and confidentiality, as well as the application of the Protection of Personal Information Act (POPIA) and the exceptions applicable when a public body is processing personal information in fulfilment of

its powers, duties and functions in terms of the law. The Court found that the Companies Tribunal made errors in law, and further overemphasized privacy rights at the expense of transparency. The Companies Act advocates for high levels of transparency and high standards of corporate governance. Companies during their existence interfaces with various stakeholders, especially labour, which means there is a higher expectation for corporate disclosure from legal entities who exist in the threshold where they have a public interest element. The court ruling aligned with the efforts of the CIPC as a regulator to ensure transparency among corporates.²⁰⁶

9.5 Criminal prosecution and conviction for non-compliance

During 2015/16 the CIPC opened eighteen cases with the SAPS regarding criminal prosecution. The areas of non-compliance related to Sections 30(1), 32(1)(b), 32(3)(b), 32(4), 61(7) and 215(2)(e) of the Act.²⁰⁷

During 2016/17 the CIPC obtained a criminal conviction for non-compliance. On 20 January 2014, a compliance notice was issued to a JSE listed director of **Quantum Property Group Limited**. The CIPC received a complaint from a shareholder of the company alleging that the company had not called an AGM for its shareholders nor produced AFS for the 2012 financial year, thus contravening Sections 30 and 61 of the Act. Since the company did not adhere to the compliance notice, the matter was referred to the NPA for prosecution as an offence. On 21 July 2016, the company was convicted of contraventions under Section 214(3), read with the provisions of Section 171 and Section 216(b) of the Act, in the Specialised Commercial Crime Court in Bellville, Cape Town, and sentenced to pay a fine of R40 000 of which R15 000 was wholly suspended for five years.²⁰⁸

9.6 Declaration of delinquent directors or directors under probation

Section 162 of the Companies Act provides for an application to declare a director delinquent or under probation. During 2015/16, CIPC had three civil matters in court. In two of the cases, CIPC applied for court orders to declare directors delinquent and in the third matter, an application was filed to place a director under probation.²⁰⁹

During 2016/17 and based on an investigation conducted into the affairs of **Skyport Corporation Limited** (later placed in liquidation) by CIPC inspectors, a delinquency application in terms of

Section 162(5) of the Act was brought by the CIPC to declare the director delinquent. The judge of the Western Cape Division concluded that it was grossly negligent for a director to have allowed a company to continue business in so parlous and insolvent a set of circumstances, to extract company cash in order to pay directors fees and to continue business in the clear knowledge that the Civil Aviation Authority (CAA) was not prepared to grant permission for the crucial element of the company's business, and to allow a public company to operate without proper accounting systems. The judge consequently declared the director delinquent.²¹⁰

On 12 August 2019, the CIPC was granted an order in the High Court of the Gauteng Division, Pretoria declaring **Mr Phumulani Zwane**, a chartered accountant and ex-director of the South African Nuclear Energy Corporation SOC Ltd (NECSA) and the then CFO of UNISA and director of certain UNISA companies, delinquent in terms of Section 162(3), read with Section 162(5)(c) of the Act. He was further disqualified in terms of Section 69(8)(b)(ii), read with Section 69(9)(a), from serving as director of any company for a period of five years calculated from 1 November 2014. He was also disqualified in terms of Section 69(8)(a), read with Section 162(6)(b), from serving as a director of any company for a period of seven years calculated from 12 August 2019. The judgment established that Mr Zwane in soliciting and accepting director's emoluments from NECSA did so knowing that he was not entitled to receive these emoluments and therefore acted in a manner that amounts to wilful misconduct and breach of trust in relation to the performance of his duties to NECSA.²¹¹

9.7 Homeowners Associations

During the 2013/14 financial year, a member of a Homeowners Association (HOA) alleged that the Board of Directors refused him access to information that was discussed at AGMs. The complainant formally served a Form CoR 24, "Request for Access to Company Information" but did not receive the requested documents. Inspectors requested information informally and formally, but the Homeowners Association's cooperation was not satisfactory, and they used the 'confidentiality claim' to prevent the complainant from having access to the information. The inspectors concluded that the Companies Act allowed the complainant access to all the information requested, and that the CEO and the directors put their own protection before the interest of the HOA. Their non-compliance with Section 26(1), read with Section 24(3) of the Act,

was captured in the register wherein non-compliance with notices is recorded for the purpose of prosecution and/or the imposition of administrative fines where non-compliance continues.²¹²

During 2022, the board of directors of the **Links Golf Club** and the **St Francis Links Homeowners Association** in St Francis Bay were informed that their disclosure certificates were being red flagged for non-compliance by the CIPC. The Commission was also preparing an affidavit to open a criminal case for referral to the NPA for failing to comply with the Companies Act. The Concerned Homeowners Group (CHOG) approached the CIPC in 2021, and following an investigation, the CIPC inspector noted her concern that the MOI of both entities read the same, despite the HOA being a non-profit company and the other a public entity. The crux of the complaint was the board's failure to accommodate a reasonable request for a meeting to provide clarity and transparency on issues of shares, governance documents such as the MOI, and the AGM quorum.²¹³

9.8 Improper accounting practices or falsification of accounting records

During 2017/18 the CIPC received a complaint from the head of accounting of a Financial Services company, relating to the AFS of **HATS Car Rental (Pty) Ltd** being compiled by an accounting officer. As a private car rental company, an accounting officer may not serve in that capacity, however, the same practitioner went on to sign off on the financials which were then relied upon by a finance house. The finance house (the complainant) suffered major financial loss due to the poor quality of the AFS. The AFS did not fairly represent the situation and business of the company and did not clearly and truthfully explain transactions and the financial position of the company's business. Reasonable doubt existed regarding the completeness, accuracy and classification of transactions and events during the mentioned financial years. There appeared to be improper financial and accounting practices by the entity and its management, and a compliance notice for rectification was issued.²¹⁴

During 2017, **Well Fit Oddy Industries (Pty) Ltd** took a compliance notice on review to the Companies Tribunal. The CIPC's findings were that the company applied fair-value hedge accounting relative to foreign exchange risk in their sales' firm commitment, and that the company was using forward exchange contracts as the hedging instrument to hedge foreign exchange risk in their sales orders. The company did not maintain

detailed hedging documentation, including non-testing of hedge-effectiveness, and therefore the criteria for the application of hedge accounting were not met. The company failed to comply with the International Financial Reporting Standards for Small and Medium-sized Entities (IFRS for SMEs), but its non-compliance was not material. The Tribunal ruled against the CIPC and cancelled the issued compliance notice on 20 July 2017.²¹⁵

On 29 January 2018 the CIPC issued a compliance notice to **Steinhoff International Holdings NV** requiring the Board of Directors to identify the individuals that were involved in the falsification of any accounting records of Steinhoff and/or any related or interrelated business units, divisions, associate companies, joint venture companies and/or subsidiaries, and to institute both criminal and civil actions, irrespective of geographic location, against those identified individuals. They were also required to provide monthly reports to the CIPC on the progress and implementation of these and had to publish the contents of the compliance notice on the JSE News Service (SENS). By the end of July 2018, Steinhoff had complied with the compliance notice and provided the CIPC with monthly reports on the progress made. In August 2018, the CIPC briefed the Parliamentary Oversight Committee on the work done in this regard. CIPC granted a request for confidentiality on the names of the individuals against whom criminal and/or civil cases were opened, and in September 2018 issued a compliance certificate to Steinhoff.²¹⁶

9.9 Misstatements in financial statements

Tongaat Hulett Limited was investigated during 2019/20 as a proactive initiative due to media reports of misstatements in the 2018 AFS. Engagements were conducted with the entity and feedback received. The company subsequently established forensic investigations and changed management, while the company board resolved to restate their AFS for the year ending 2018 and prior periods. The company further opened criminal cases against a former senior executive, and the CIPC requested documentation as proof that cases have been opened against the former directors who have been implicated.²¹⁷

9.10 Property syndication

During October 2018, the media reported that **Communicare NPC**, an independent social enterprise that manages a residential portfolio in the affordable and social housing market, were investigating alleged collusive procurement practices between suppliers and its staff. The

investigation concluded during April 2019 that criminal cases should be opened against employees and affected suppliers where evidence was found of fraud, theft, corruption, and racketeering.²¹⁸ Due to these media reports, the CIPC decided to investigate the entity proactively during May 2019. The investigation found that Communicare NPC allegedly applied sections of the Act which are not applicable to non-profit companies in terms of Schedule 1 of the Act. The merits of the investigation revolved around the legality of the transfer of social housing stock and other immovable property by Communicare NPC to another company (a private company), claimed to be controlled by Communicare NPC, and whether the disposal was done at fair value.²¹⁹

During 2021/2022 **Nova PropGrow Group Holdings Limited** was investigated and issued with a CoR19.1 notice to show cause why it should be permitted to continue business or to trade. The entity was subsequently issued with a compliance notice on 25 October 2021 to prove beyond reasonable doubt that it would not be in a financially distressed position by the end of its February 2022 financial year. Another compliance notice was issued on 26 July 2022, requiring the entity to temporarily cease carrying on business, with the condition that it may continue meeting its contractual operational obligations, but may not dispose of any immovable property. These enforcement actions were informed by the facts contained in the AFS, the Scheme of Arrangement (SoA) alluded to in the AFS, read in conjunction with the Debenture Trust Deed. From the Commission's assessment, there were reasonable doubt about the company's ability to fulfil its debenture repayments as articulated in the SoA.²²⁰

While the investigation stemmed primarily from the CCDR unit due to financial reporting contentions, Nova's insistent arguments about its obligations to debenture holders prompted an administrative and regulatory retrospective triangulation of the entity's footprint. The Commission found certain historical salient matters, part of which included the fallout of the property syndication industry, and which necessitated a diagnosis of the causes of that fallout and to identify areas that may need further attention for better prospective inter-regulator coordination. The legal implications of the retrospective findings that surfaced from the triangulation have a grossly material impact on the actions taken by the parties which caused the cessation of various property syndication companies, including, but not limited to the Sharemax property syndication companies, the restructuring thereof and the consequent establishment of the entities known as Nova

Property Group Investments (Pty) Ltd (formerly Nova Property Investments (Pty) Ltd) and Nova PropGrow Group Holdings Ltd (formerly Nova Property Group Holdings Ltd). The Commission concluded that the conditions under which Nova has been operating are diametrically opposed to the purposes of the Companies Act and should not be permitted to continue without intervention. The Commission subsequently had to take further enforcement steps against Nova by escalating the case to an inter-regulator level to maintain significant levels of investor confidence and mitigate the systemic risk of the economic phenomena that has led to the Nova case. The inter-regulatory deliberations and investigation is currently still ongoing with the purpose to find a legally accurate and equitable outcome for investors, the companies, and directors.²²¹

9.11 Reckless trading

During 2019/2020, some of the high-profile companies under investigation for contravening Section 22 involving reckless Trading or trading under insolvent circumstances, were **Sanlam Group**, the **South African Red Cross Society**, **Kagiso Media**, **Unitrans Freight Services**, **Suzuki Montana**, and **Alexander Forbes Investments**.²²²

In line with the enforcement role as stipulated in Section 158 of the Act, the CIPC is committed to protect the interests of shareholders, investors, and related parties, and to create an enabling and secure environment for all investors in entities regulated by the Companies Act. The CIPC therefore brought a liquidation application, in collaboration with other regulatory agencies, against **Selective Empowerment Investments 1 Limited** in terms of Section 81(1)(f) of the Act after numerous compliance notices, which included reckless trading amongst other violations, were issued over several financial years for the contravention of Sections 24 and 30 of the Act. On 24 April 2023, the entity was placed under final winding up by the Court. The CIPC considered this order as the best remedy to protect the investors, many of whom were first time or inexperienced investors who bought shares in an entity who procured shares using public funds.²²³

9.12 State-owned companies

During 2013/14, **Telkom SA (SOC) Limited** was the subject of investigation. On 10 February 2014, the CIPC issued a compliance notice to the Director and Group Chief Executive Officer (CEO), Mr SN Maseko for granting an interest free loan to the CFO of Telkom, Mr J Schindehutte prior to the

Board of Telkom passing the necessary financial assistance resolutions, in contravention of Sections 44 and 45 of the Act. The compliance notice required Mr Maseko to update the CIPC monthly on the progress made in recovering the loan amount of R5 997 775, 43 from Mr Schindehutte, attend corporate governance and a director duties course at his own expense, and to inform the shareholders of Telkom of the contents of the compliance notice. Telkom subsequently confirmed to the CIPC that they have complied with the terms of the compliance notice.²²⁴

During 2017/18, CIPC initiated an investigation into the affairs of the **South African Forestry Company SOC Ltd**, triggered by a newspaper article published by *Business Day Live* on 21 September 2017. The article indicated that the Auditor General's (AG) opinion was qualified because of internal control deficiencies and understatement of irregular expenditure. A meeting was held with the entity and a formal letter sent requesting that they address the CIPC's concerns. In their response, they were required to outline future mitigation and prevention measures. The CIPC accepted the entity's action plan, as corrective measures had been taken involving the appointment of a new chief financial officer and a new board. The entity will however continue to be monitored by the CIPC.²²⁵

As part of CIPC's investigations into reportable irregularities issued against **Transnet SOC Limited** on 31 January 2018, a meeting was held with the Group Chief Executive Officer and his top leadership regarding an investigation that included a reportable irregularity issued against the leadership. Interventions were confirmed by the leadership in attendance from the SOC to be already underway on procurement delegations due for ratification by the board and an internal disciplinary process initiated against one of the executives whose conduct was not satisfactory.²²⁶ During 2019/20, Transnet was again reported by IRBA for contravention of Section 76(3)(b) and (c) of the Act. A senior officer of Transnet had not exercised the powers and perform the functions of a prescribed officer in the best interest of the company, and with the degree of care, skill and diligence that may be expected of a prescribed officer. A letter was sent to the relevant authority (within Transnet) on the 28th of November 2019 in this regard.²²⁷

Through the monitoring of media articles during 2018/19, it was noticed that the **Public Investment Corporation (PIC)** made an investment of R4,3 billion in **AYO Technology Solutions Ltd**. In terms of Section 33 of the Act every company must

file an annual return fee as determined by the company's turnover. In accordance with CIPC's database the various corporate incarnations of Technology Solutions Ltd (i.e. Sekunjalo Health Care Ltd; Sekunjalo Technology Solutions and AYO Technology Solutions Ltd) declared to the CIPC turnover between R0.00 and R82 794 000.00. This was in violation of Section 76(2)(a)(ii) which states that a director of a company must not knowingly cause harm to the company or a subsidiary of the company. Consequently, the CIPC issued a compliance notice to PIC on 21 February 2019 in terms of Sections 171(1) and (2) of the Act. Given PIC's role in managing public funds, it is in the public interest that the Board of Directors should be held accountable for the recovery of the irregularly invested funds. On 7 March 2019, AYO filed an application against the CIPC, the Minister of Trade and Industry and PIC with the High Court in Pretoria to interdict and restrain the CIPC from enforcing the compliance notice issued to the Board of Directors of PIC, and to prohibit PIC from complying with the terms of the notice. The Court found that the CIPC did not afford the parties a fair hearing and ordered that the compliance notice be declared unlawful and set aside.²²⁸ This action by the CIPC however resulted in the PIC instituting a legal process to recover the R4.3 billion investment in AYO, and set a precedent for directors to be aware that they could potentially face a compliance notice if they do not take their fiduciary duties as directors seriously.²²⁹

Eskom Holdings SOC Limited has been reported by IRBA during 2019/20 for contravention of Section 76 of the Act, due to a suspected breach of fiduciary duty by the board of directors in dealing with the BBBEE Act, 2003. A letter was sent to the relevant authority (within Eskom) on the 20th of August 2019.²³⁰ A reportable irregularity was also received for Eskom during 2022/23. Inaccurate financial statements for the year under review were reported. Management did not keep accurate and complete accounting records for the financial statements to be prepared, in accordance with relevant laws and regulations. The considerations led the auditors to believe that the combination of the multiple non-compliances of PFMA (Sections 40, 51, and 55) and the Companies Act (Sections 28, 29 and 93), all relating to inaccurate and incomplete financial record keeping, were a material breach of the fiduciary duties of the management team at Eskom.²³¹

9.13 Unauthorized director or member changes

During the 2013/14 year, the CIPC enforcement section investigated fifteen cases of allegations of unauthorised director or member changes. The

outcomes in these cases were either that the director / member statuses were reversed, or it was determined that the changes were correctly made. In one matter adverse findings were made against both parties but the director statuses were not amended. Both parties were advised that they should try and work together and that they can approach the CIPC for assistance for a consent order should they consider it appropriate.²³²

9.14 Unauthorized share issue

During 2021/22 **Eureka Beperk Limited** issued shares to members of the public without a registered prospectus. An investigator was formally appointed to investigate. Engagements with the new board of the company have taken place, however, further conditions were raised before the investigation could be considered complete. The same non-compliance was observed with regards to **Agiltee Pty Ltd**, and an investigator was also appointed to investigate.²³³

On 15 June 2021, the CIPC was alerted to an unregistered prospectus (YWBN Own the Bank

Share Scheme), which was used to raise funds to register a Mutual Bank for historically disadvantage individuals and groupings. This prompted an investigation, and adverse findings were made against the **Young Women in Business Network (YWBN)** for, amongst other things, non-compliance with various sections of the Co-operatives Act and contravening Section 99 of the Companies Act. A compliance directive was issued to reverse any share transaction issued between 1 to 30 June 2021 and to repay all the investors who accepted shares based on the circulated prospectus; create an Indivisible Reserve; capitalise membership fees; and comply with Section 29(b) going forward. After the application was brought on review, the Tribunal upheld the review and modified the CIPC directive to allow the entity 21 days to comply.²³⁴

9.15 Statistics on high-profile cases

The number of high impact / high profile cases increased slightly over the years as illustrated by **Figure C9-1**.²³⁵ No statistics were kept before 2019.

Figure C9-1: Statistics on the volume of high-profile cases since 2019



PART D: OPERATIONAL EFFECTIVENESS



10. LEADING PRACTICES AND AWARDS

10.1 Leading innovative practices

With so many technological advances, various capabilities have been created for faster consumption of data. Several change management initiatives were embarked upon by the CIPC to enlighten the market about eXtensible Business Reporting Language (XBRL) and to create a positive sentiment about the technology, its positive impacts, and how it links with regulation. It was important to highlight how the introduction of the new technology would impact individual entities. Some of the interventions included presentations by the Commissioner, Adv. Rory Voller, at a XBRL Conference on 14 August 2019, and an advocacy event at CFO Indaba 2019 on 17 October 2019, to educate attendees on the XBRL Project introduced by the CIPC on 01 July 2018.²³⁶

Several African jurisdictions such as Ethiopia, Sierra Leone, Kenya, and Uganda, as well as international jurisdictions like the United Arab Emirates, New Zealand, and Canada, have expressed interest in learning from the CIPC as they chart into new territory with implementing the iXBRL standard themselves. Such collaborations ensure that regulators across jurisdictions benefit from each other by sharing experiences and learnings and expose new methods as the understanding and use of various complementary technologies and frameworks matures.²³⁷

The CIPC shared best practices on 12 July 2019 in an hour-long interview with the Senior Technical Services Advisor for the New Zealand Business Registration Office. They intended to introduce XBRL in their jurisdiction and were interested in CIPC's journey from business case to implementation. The CIPC also shared its best practices in an interview on 9 December 2019 with the Executive Director - Monitoring and Enforcement for the Abu Dhabi Global Market (a fellow Business Registrar) who showed interest in how the CIPC implemented XBRL, what lessons were learnt and what benefits the technology can bring for the market.²³⁸

By providing technical assistance and benchmarking opportunities to strengthen other regulators in South Africa and in the African Trade Region through the XBRL programme, the CIPC contributes to increase investor confidence in businesses. This in turn leads to corporate growth, sustainability and the leveraging of export

opportunities which all have a positive impact on the country's economy.²³⁹

10.2 International participation

The Commissioner was nominated in 2019 to serve on the XBRL International Board of Directors. The Commissioner was also re-elected to the international Corporate Registers Forum (CRF) for another two-year second term. By serving on these executive committees, the interests of Corporate Registries in the continent can be advanced, while advocating for more collaboration and cooperation among registries.²⁴⁰

Mr Cuma Zwane, a Senior Investigator at CCDR, was recommended to serve on the IFRS Taxonomy Consultative Group (ITCG), representing the CIPC and South Africa for a three-year term. ITCG is an expert consultative group established to assist the International Accounting Standards Board in IFRS Taxonomy and related activities.²⁴¹

10.3 Awards

The CIPC was awarded the most Innovative Public Service Entity of the Year for 2020 by the Centre for Public Service Innovation (CPSI), as well as the effective use of digitised services award, throughout all tiers of government, for its Bizportal online registration system. The CIPC was commended by the Minister of the DTIC for embracing new technologies to speed up its services and to widen access to the public. These innovations assist with improving the ease of doing business in South Africa and to facilitate the economic recovery programmes of the government.²⁴²

The CIPC won an Innovation Award from the Corporate Registers Forum (CRF) on the implementation of its XBRL Programme, and the award ceremony was held on 31 March 2021, during which the CIPC was also congratulated on the success of its XBRL project.²⁴³ The CRF Innovation Award is given to members that implemented innovative initiatives to improve service delivery and operational efficiency of the corporate registers in their jurisdictions.²⁴⁴

11. IMPROVING REGULATORY EFFICIENCY

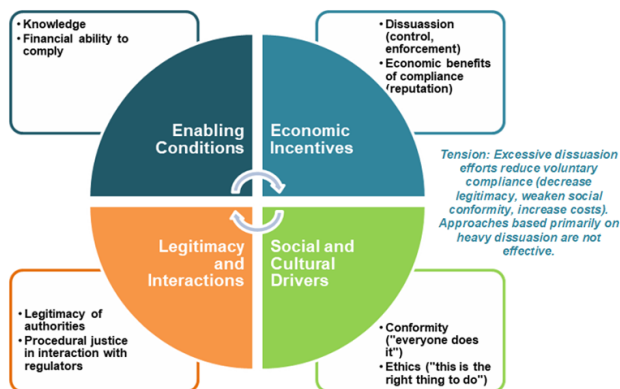
11.1 Compliance drivers

Research suggests that compliance is a complex issue that may be driven by several factors as

illustrated in **Figure D11-1**. Neither a deterrence-based approach nor a cooperative approach can therefore in isolation be an effective or efficient intervention strategy. Each organization may be motivated at different times by a complex “blend” of factors, which could include:

- ❖ Dissuasion;
- ❖ knowledge and understanding of regulations;
- ❖ ability to comply;
- ❖ rational calculations - cost of compliance and level of deterrence, potential market benefits of compliance;
- ❖ social conformity - prevailing behaviour in the regulated group;
- ❖ ethical values - alignment between moral values and norms; and
- ❖ legitimacy of the regulator.²⁴⁵

Figure D11-1: Complimentary compliance drivers and tensions²⁴⁶



11.2 Enforcement approaches

Regulatory agencies have the choice to use one or a combination of several enforcement approaches or models from the following options:

- ❖ The **deterrence-based** model requires a tough stance on violators and send a clear signal to other potential violators. It has limits and may be effective for some operators but not for others. It could also lead to a culture of regulatory resistance which could be counterproductive.
- ❖ The **cooperative** strategy is based on advice and persuasion, and assumes that many violations take place because of a lack of knowledge. This approach is often criticized for being too soft on violators.
- ❖ The **procedural justice** model considers that the behaviour of the regulator could strongly influence its legitimacy. Acting in a transparent and fair manner, treating regulated entities with respect, and listening to their views and arguments may result in an increased

legitimacy, which in turn may increase compliance. Conversely, exceedingly harsh enforcement, lack of respect by inspectors, and non-transparent decisions may reduce procedural justice, perception, legitimacy, and compliance.

- ❖ The **tit-for-tat** strategy refers to an approach where the regulator reacts to signalling received from corporate entities. For example, if the entity shows its willingness to engage in cooperative behaviour, the enforcing regulator would react with cooperative behaviour.
- ❖ With **responsive regulation** the enforcement approach is differentiated *ex ante* as well as during the ongoing relationship with operators. Increased cooperation would lead the regulator to turn to more cooperative measures, while low cooperation would lead to significantly stronger enforcement. The idea is that the “signalling” will itself increase compliance because it will show that cooperation results in lower costs for the operators. It is not always possible, however, to simply target the enforcement approach to a given operator or a given profile, and while enforcement measures can be “calibrated” in a “responsive” way as part of an ongoing relationship, this is not fully applicable to the planning of inspection visits itself.
- ❖ The **targeting approach** is inherently *ex post* and distinguish between different types of operators, rules, and compliance profiles, and differentiate enforcement approaches and efforts accordingly. Inspection efforts and enforcement measures are not based on random visits or “one size fits all” enforcement but are focused and chosen based on the division of firms into different classes based on their level of risk and compliance behaviour in the past. Targeting could also be based on *ex ante* risk assessment or combined with the firm’s compliance record as an additional variable through which the assessed risk level is modified and made dynamic. Research has shown that this approach could increase compliance.
- ❖ **Smart enforcement** takes the complexity of the compliance drivers into account. It is a proactive tool that considers the risk profile of operational activities or industries, or certain general risk categories, and select the most appropriate regulatory delivery approach to obtain better results from enforcement actions. For example, with some types of businesses such as small entities or those with inherently limited risks, inspections may not be the optimal tool. Other instruments such as information strategies may be preferable to promote compliance. Although such a risk-

based strategy appears to achieve higher effectiveness and efficiency, it should never be used in an exclusive and simplistic manner, for example by inspecting only high-risk establishments. The approach should be graded, for example, the enforcement frequency may increase with risk, and/or be combined with random visits.²⁴⁷

11.3 Reducing the regulatory burden

A regulatory obligation typically imposes costs on the regulated entity to comply with the regulation and achieve its objectives. If the benefits of the obligation exceed these costs it may be justified. However, regulation that is poorly designed or implemented can impose unnecessary and excessive costs on those being regulated. In considering whether a regulatory obligation is a burden it needs to be assessed as to whether it is excessive, unnecessary, or inefficient:

- ❖ Excessive obligations are onerous or complex.
- ❖ Unnecessary obligations have an unclear purpose, or the data collected are not used.
- ❖ Inefficient obligations are overlapping, duplicative, cause delays, have unclear provisions, are inconsistent and/or other obligations are better placed to perform the function.²⁴⁸

11.4 Principles of effective enforcement

As summarized in **Table D11-1**, the OECD proposed several key principles on which effective and efficient regulatory enforcement and inspections should be based to pursue the best compliance outcomes and highest regulatory quality. Some of these principles may be relevant to each context, and there are some trade-offs between different principles that may be decided differently based on the priorities in each jurisdiction.²⁴⁹

CIPC should therefore strive to occasionally review the overall policies, institutional framework and tools used by its investigation units to improve its regulatory efficiency and the effectiveness of its compliance monitoring and enforcement practices. There should be a constant focus on consistently improving the way compliance and enforcement activities are organised and delivered. Proportionality in enforcement, in terms of the allocation of resources proportional to the level of risk and the seriousness of the violation, could improve the efficiency and effectiveness of inspections and investigations. It may also reduce regulatory costs on businesses and citizens and assist in reducing the administrative burdens and other obstacles to business growth that stem from regulatory compliance and enforcement.²⁵⁰

Table D11-1: Best Practice Principles for Regulatory Policy²⁵¹

Evidence-based enforcement	<ul style="list-style-type: none"> Regulatory enforcement and inspections should be evidence-based and measurement-based Deciding what to inspect and how should be grounded on data and evidence Results should be evaluated regularly
Selectivity	<ul style="list-style-type: none"> Allow market forces, private sector and civil society actions to also promote compliance and enforce rules wherever possible Inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulatory objectives
Risk focus and proportionality	<ul style="list-style-type: none"> Enforcement needs to be risk-based and proportionate The frequency of inspections and the resources employed should be proportional to the level of risk. Enforcement actions should be aiming at reducing the actual risk posed by infractions
Responsive regulation	<ul style="list-style-type: none"> Enforcement should be based on "responsive regulation" principles Inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses
Long-term vision	<ul style="list-style-type: none"> Governments should adopt policies and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term road-map
Co-ordination and consolidation	<ul style="list-style-type: none"> Inspection functions should be co-ordinated and, where needed, consolidated Less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness
Transparent governance	<ul style="list-style-type: none"> Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management Execution of regulatory enforcement should be independent from political influence Compliance promotion efforts should be rewarded
Information integration	<ul style="list-style-type: none"> Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources
Clear and fair process	<ul style="list-style-type: none"> Governments should ensure clarity of rules and process for enforcement and inspections Coherent legislation to organise inspections and enforcement needs to be adopted and published Clearly articulate rights and obligations of officials and of businesses
Compliance promotion	<ul style="list-style-type: none"> Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists
Professionalism	<ul style="list-style-type: none"> Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency This requires substantial training focusing not only on technical but also on generic inspection skills Official guidelines for inspectors to help ensure consistency and fairness

12. CONCLUSION

The global financial crisis and failures of large international corporates, such as Enron and Arthur Andersen, created a renewed focus on credible regulation and good governance. The LIBOR fixing scandal in the United Kingdom further emphasised the need for such a focus. In South Africa, the new Companies Act of 2008 created a regime that facilitated enhanced enforcement and compliance monitoring. The CIPC, as custodian of the Companies Act, had an important role to play in fostering corporate compliance and to enhance awareness among all business entities of their corporate compliance, disclosure and governance obligations.²⁵²

Company law has a direct impact on the way both local and global business is transacted. South Africa's current corporate laws are structured in a manner that seeks to support economic growth, investor confidence and foreign investment. As a result, transparency, accountability, proper corporate governance, and legal and voluntary compliance now play a pivotal role in modern business practices in the country.²⁵³

The CIPC has come a long way since its predecessor was described by the Nel Commission investigating the Masterbond scandal, as *"little more than an antiqued filing room which cannot cope with the demands of modern commerce"*.²⁵⁴ Since the establishment of the CIPC in 2011, the organization did extensive work pertaining to its journey of innovation to provide greater access to its services, improve service delivery, enhance the value of collaboration, and to offer innovative solutions to customer needs. To this end, the organisation formed strategic partnerships with a range of organisations to improve efficiency and effectiveness by integrating business registration and related services, enhancing customer experience and ensuring that its regulatory function expands and gains momentum to ultimately remain relevant as an organisation.²⁵⁵

Over the last ten years the CIPC strengthened its capability to deliver an effective compliance monitoring function by focusing on communication and education, and expanding into visible monitoring and enforcement, in line with a comprehensive risk-based approach. By improving market surveillance and enhancing its regulation and monitoring functions, the enforcement function gained momentum through its investigative role and the issuing of compliance notices which

resulted in the declaration of director delinquency or the issuing of administrative fines in some instances. Over time these enforcement actions translated into innovations in relevant policy, legislation, and governance best practice to enhance the credibility of the South African corporate regulatory environment as a safe and secure environment that promotes good corporate governance and protects corporate rights.²⁵⁶

These enforcement objectives agree with the four key focus areas of CIPC's Vision 2030 Strategy, namely:

- ❖ Building the competencies and capabilities required for a world-class modern regulator.
- ❖ Reducing the administrative regulatory burden to make it is easier to do business in South Africa.
- ❖ Creating a reputable Business Regulation environment in South Africa to boost investor confidence in local businesses.
- ❖ Supporting third party and CIPC's own decision-making by leveraging knowledge assets and networks, extracting maximum value for the CIPC and its customer.²⁵⁷

Over the following years the Commission will therefore continue to establish itself as a credible world-class regulator through its compliance monitoring and enforcement functions.

13. RECOMMENDATIONS

To overcome the remaining challenges experienced by the two investigation units of the Commission, and to improve the quality of their investigations and the efficiency of their monitoring and enforcement actions over the next ten years, the following recommendations could be considered for future projects:

Recommendation 1: Follow up on IRBA reportable irregularities

Stakeholder engagements with IRBA and auditors should be strengthened. Like what has been done for the Independent Review stream, the CIPC could enquire about why auditors do not file Reportable Irregularities or why the volume of reports received by the CIPC are low. Anonymous surveys could monitor the reasons. Furthermore, feedback about case closures should be given through to IRBA:

"The follow-up process of reportable irregularities should be improved to ensure corrective actions are taken. While

conceptually the requirement for auditors (and independent reviewers) to submit reportable irregularities is considered a valuable tool for detecting and deterring wrongdoing, there should be an obligation on the part of the regulator to take appropriate follow-up action on the reported irregularity. In addition, that regulator should be required to report back to IRBA ... on an annual basis as to the dispositions of the reports so that outcomes may be measured.”²⁵⁸

Recommendation 2: Automated Case Management System

The Enforcement and Compliance unit requires an automated, transportable, and integrated IT system for case management. Such a system or platform should not only hold the case files and registers but should be able to direct process flows and collect performance management information. It must be integrated with all the current CIPC platforms and corporate databases so that all the files for an entity, including any previous investigation documents, should be available to an investigator. The system should ideally utilize AI search, analysis, and Business Intelligence capabilities to enhance investigative work and to pick up repeat offenders, or all the other entities that a specific person or director is or has been involved with.

Recommendation 3: Additional Case Review Committee

The Enforcement units could establish another Committee, similar to the AFSRC, that would meet periodically (for example quarterly) to discuss cases and problems experienced with auditing and independent review reportable irregularities and proactive investigations. Through such a forum, investigators can share approaches, best practices, and receive advice from more experienced colleagues on problematic investigations.

Recommendation 4: Foster greater internal cooperation

Greater cooperation and coordination should be fostered between divisions within the CIPC. This would not only enhance the CIPC's enforcement actions but also uphold the integrity of its corporate registers, by for example, keeping track of delinquent directors. Investigation units should further be consulted in any proposed system upgrades that would impact on their work functions.

The importance of regular discussions and/or meetings between the internal legal counsel and the investigation units have previously been emphasized by CGSE. This would facilitate the sharing of feedback and exchanging of views on the lessons learned, based on the outcome of investigative work and related internal justice system actions, including quality and legal aspects.²⁵⁹

Recommendation 5: Foster greater cooperation with the FRSC

The AFS stream within CCDD should strive to establish an active advocacy and policy coordination function or channel with the FRSC. This will assist the CIPC to more efficiently fulfil its function as mandated by Section 187(3) of the Act, namely, to promote the reliability of financial statements by making recommendations to the FRSC for amendments to financial reporting standards, to secure better reliability and compliance.

This will especially become important with regards to the future implementation of the ISSB's sustainability reporting standards, and its related policy considerations in South Africa.

Recommendation 6: In-house legal counsel

It has been proposed previously that the CIPC should establish an in-house legal counsel consisting of a panel of legal representatives that will assist with the preparation of evidence, the initiation of court procedures and consultation with the NPA and State Attorney's office.

For example, the Companies Commission of Malaysia established a division responsible for conducting prosecutions, and handling litigation matters in Court. The Prosecution Section registers cases in Court for offences committed under the mandated corporate legislation and prosecutes cases in the interest of the Commission and the public at large, as well as attending and representing the Commission in appeal cases in the higher courts. The Litigation Section attends to civil suits, hearings and appeal matters in relation to cases initiated by or against the Commission; conducts research and studies on matters which involve legislative issues for the purpose of handling cases, primarily to determine the authority and provisions of the relevant laws; and prepares affidavits, appeals, written submissions and other document to be filed in Court.²⁶⁰

Recommendation 7: Updated Investigations Procedure Manual

Either update the existing Investigations Procedures Manuals developed previously by Ms Lana Van Zyl and Adv Leslie Davids in collaboration with the CGSE unit, or create a separate manual specifically for CCDD, to contain all the office processes, procedures and work flows for each stream and/or unit, and with specific guidelines on how to deal with certain cases, specific complaints and certain legal intricacies. This manual should also contain an appendix combining the CIPC Notices and Practice Notes that are relevant to CCDD and CGSE, as well as a summary of the decisions made by the Companies Tribunal of the CIPC enforcement cases taken on review, to provide a legal basis that investigators can use to assess their cases or to substantiate their judgements in their Inspector Reports. This will allow uniformity of investigations among investigators, improve the quality of work, provide guidance on how to approach certain cases for colleagues who do not have a legal background, and assist new personnel to more easily integrate into the unit and their roles.

Recommendation 8: Enhanced training and capacity building

Investigators should have access to periodic capacity building and training initiatives to upskill themselves or to utilize as refresher courses where appropriate. Resources should be made available in the units' budgets for these training opportunities. Investigators should have the option to be trained further in various investigation, compliance monitoring, evidence-gathering, report writing and statement analysis skills.

According to an OECD study, an ideal competency and training framework for inspectors would encompass the following:

- ❖ technical skills.
- ❖ generic skills such as:
 - the understanding and analysis of risk, and approaches to compliance promotion (communication, relationship-building, how to handle violations).
 - a sufficient understanding of business logic, market forces and the role of consumers and other market players in driving business attitudes (including compliance).
- ❖ Conflict management skills to handle often complex situations with businesses.
- ❖ Investigative skills.²⁶¹

Recommendation 9: Review and benchmarking of the escalation process for non-compliant entities, penalties, and the quantum of administrative fines

Scholars have criticized certain aspects of the current process of issuing and objecting to compliance notices.²⁶² The process needs to be reviewed to reconsider the available penalties, sanctions and remedies, and the determination of the quantum of administrative fines. Companies that fail to comply with compliance notices are referred to the court for the imposition of administrative fines and the Companies Tribunal is completely left out from this process.

The IMF further suggested that the CIPC should be empowered to impose administrative penalties directly, so that the CIPC could apply sanctions for failure to comply with disclosure requirements.²⁶³

The imposition of a deterrent rather than retributive administrative fine, and the method of determining its quantum, could be benchmarked against similar processes or guidelines by, for example, the Competition Commission, to achieve a more objective and transparent determination.²⁶⁴

Recommendation 10: Collaboration with the Companies Tribunal

It has been proposed before that the CIPC should foster greater collaboration with the Companies Tribunal to create investigated precedent cases.²⁶⁵ As proposed in Recommendation 7, the Tribunal's decisions could be recorded in an updated investigation manual.

The CIPC investigators should also receive training on the Tribunal's mandate, processes and procedures, the writing of affidavits and pleadings, and the options for Alternative Dispute Resolution.

Recommendation 11: Occasional publication of enforcement matters

It was previously proposed that a consolidation / dashboard report should be developed for publication internally and for external use to capture the CCDD's and CGSE's milestones, volumes, and trends over time.²⁶⁶

The investigation units should more frequently publish reports on their enforcement actions and share this with external stakeholders. For example, the regulator of companies in Singapore, ACRA, periodically publishes a report encapsulating the surveillance work of the AFS review cycle and focus. The reports not only highlight general

industry trends in accounting deficiencies and the root causes contributing to material non-compliances with accounting standards, but also provide good practices for entities to reply to the regulator's enquiries. It further includes learning points to guide directors in avoiding common pitfalls and to encourage them to take the lead in raising the quality bar on financial reporting.²⁶⁷

In South Africa, IRBA and the JSE also publish similar reports to report on the nature and thematic analysis of enforcement cases and the outcomes of enforcement processes.²⁶⁸

Occasional case studies on relevant investigation cases should further highlight trends that could inform policy or regulatory reviews.

Recommendation 12: Streamlining of case registers

The case registers from CCDR and CGSE should be streamlined and updated regularly and consistently. Old cases, for example cases older than 1-2 years that have not been closed yet, should periodically be followed up on.

Additional information should be kept for each case such as the dates of CoR137 appointments, the issuance of compliance notices and compliance certificates, Companies Tribunal reviews or objections, and referrals to the State Attorney and NPA.

Registers should be kept consistently, according to the dates of the financial year (namely from April to March) and there should be consistency and consensus for the way in which the reasons for closure of a cases are annotated. At the end of each financial year, the relevant statistics in terms of volumes received, closed, and pending, the types of contraventions, the types of entities, the relevant accounting or auditing firms, and so forth, should be summarized on the register for that particular year to facilitate the analysis for future five or ten-year review projects.

The IRBA case register should only contain Reportable Irregularities reported by IRBA. Proactive cases should be kept in a separate register.

Since the legal basis is difference for each type of case, the case registers administered by the CCDR's Independent Review stream, should also be kept separately for Regulation 29 reportable irregularities, NOCLARs and the S62(3) reports received from accounting officers of Close Corporations. The stream should furthermore keep

an additional case register to monitor compliance with Regulation 29(12) reports by accounting organizations.

It is proposed that the units keep and regularly update a Compliance Notice Register, so that the impacts of enforcement actions can be measured.

(Some proposals under Recommendation 12 have already been implemented as part of the outcome of this project).

PART E: RESEARCH SOURCES



14. ENDNOTES

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