**ACCFIN SOFTWARE (PTY) LTD**

**29 September 2023**

**Companies and Intellectual Property Commission (CIPC)**

**The DTI Campus**

**77 Meintjies Street, Sunnyside**

**Pretoria**

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Dear Commissioner,

**SUBJECT: URGENT CONCERNS REGARDING REGULATORY COMPLIANCE AND STAKEHOLDER ENGAGEMENT**

I am writing to express serious concerns regarding several issues that have surfaced in our interactions with the CIPC. These concerns pertain to the responsiveness of the CIPC, compliance with the Companies Act, stakeholder engagement, the completion rate of required forms, the impending deadline for lifting grey listing, issues with the beneficial ownership website, the threat of compliance penalties, and the significance of the Beneficial Ownership (BO) register.

**Lack of Timely Responses:**

The failure of the CIPC to respond to questions in a timely manner is indicative of a lack of knowledge or understanding of the queries posed. This lack of responsiveness undermines the credibility of the CIPC and raises questions about its competence in addressing stakeholders' concerns. Alternatively, it raises the concern that perhaps the CIPC simply doesn't care about the issues being raised, which is equally concerning.

**Inclusion of Beneficial Owners in the Securities Register:**

The Companies Act mandates the inclusion of beneficial owners in the securities register. However, the CIPC has stated that the BO data is not intended for public consumption. Given this stance, it raises questions as to why it would be a requirement to include such data in the securities register, which is a public document. Including beneficial owners in the securities register is impossible due to the multiple levels of calculation that Beneficial Ownership has to undergo to arrive at the end result. If this is indeed a requirement, then a complete reprogramming of all securities registers would be necessary. In my view, the term "beneficial ownership" in the Companies Act should be replaced with "beneficial interest" for clarity and accuracy.

**Apparent Lack of Engagement:**

The apparent reluctance of the CIPC to engage meaningfully with stakeholders is disconcerting. This lack of interest in engagement is detrimental to fostering a collaborative and transparent relationship between the CIPC and the entities it regulates.

**Issues with the Beneficial Ownership Website and Compliance with the Companies Act:**

We have observed that the beneficial ownership website is not conducive for manual data entry, especially when dealing with large volumes of data. The site often hangs or becomes unresponsive during peak times, making it challenging for users to input information efficiently. Furthermore, the system currently does not allow updates to the beneficial ownership register, which is a significant limitation for companies that need to make periodic changes or corrections. It's worth noting that updates to the BO register are mandated by the Companies Act, making it imperative for the system to accommodate such updates.

Originally in regard to the trusts we were advised that the trustee must be one of the beneficiaries with the zero percentage. It seems that the CIPC now accepts the fact that the beneficiaries are the beneficial owners and that you need to put in a percentage. This seems to have changed in that originally we were told to stop at the trust.

**Challenges with the Mandate and One-Time Passwords:**The first was the fact that the mandate to be signed by the directors of the company could also be the shareholders. We were told it needs to be on the company’s letterhead. Most companies don’t even know what all this is about, and they rely on the secretarial practitioner to do the work. Therefore, it’s going to be best if the practitioner sends them a mandate which they sign, which could be on the practitioner’s letterhead or could just be on a blank page. When the beneficial ownership is filed, a one-time password is sent to the practitioner. There have been many instances where the one-time password has not been received.

**Low Completion Rate of Required Forms:**

The fact that only 11,500 forms have been completed is a glaring indication of a systemic flaw or lack of clarity in the process. This low completion rate raises concerns about the effectiveness of the current system and its ability to achieve its intended objectives. I am sure that I don't have to remind the CIPC of the glaring IT failures that have occurred in the past, further emphasizing the need for a robust and efficient system.

**Concerns Over Compliance Penalties:**

While we understand the importance of compliance and the need for penalties to ensure adherence, it feels particularly untimely to threaten such penalties when the current environment, as detailed in our previous points, is not conducive to meeting the set deadlines. It's crucial that the CIPC recognizes the challenges companies and the secretarial profession are facing and considers a more empathetic approach, especially when the system's limitations are a significant part of the problem.

**Significance of the Beneficial Ownership (BO) Register:**

The primary objective of the BO register is to accumulate comprehensive data on beneficial owners. It's imperative to understand that every entry, no matter how seemingly insignificant, holds value. Stating that it's unnecessary to add a single individual to the register is a misrepresentation of the register's purpose. Each individual, regardless of their perceived importance, could provide crucial data and potentially serve as a missing link in the broader picture. It's essential to recognize that the integrity and completeness of the BO register are paramount, and every individual's data contributes to its efficacy.

**Unattainable Deadline for Lifting Grey Listing:**

The looming deadline for lifting grey listing appears to be unachievable under the current circumstances. This unattainable deadline puts undue pressure on companies and may lead to non-compliance due to systemic inefficiencies.

**Recommendations:**

**Enhance Responsiveness:** The CIPC should improve its responsiveness to inquiries and provide clear, concise, and accurate answers to stakeholders' questions.

**Clarify Compliance Requirements:** The CIPC needs to provide clear guidelines and practical solutions to help companies comply with the requirement of including beneficial owners in the securities register.

**Bulk Submission of Registers by Vendors:** To streamline the process and make it more efficient, the CIPC should consider allowing vendors to file registers in bulk. This would greatly reduce the administrative burden on individual vendors and expedite the compliance process.

**Improve the Beneficial Ownership Website:** The CIPC should invest in enhancing the website's infrastructure to handle large-scale manual data entries without freezing or slowing down. Additionally, introducing a feature that allows updates to the beneficial ownership register would be highly beneficial for companies to maintain accurate and up-to-date records.

**Reconsider Compliance Penalties:** Given the challenges presented by the current environment, the CIPC should reconsider the imposition of compliance penalties. It would be more appropriate to focus on improving the system and extending deadlines, ensuring that companies have a fair chance to comply without the looming threat of penalties.

**Ensure Completeness of the BO Register:** The CIPC should emphasize the importance of including all beneficial owners in the register, regardless of the number of entities they are associated with. Every individual's data is vital, and omitting even a single entry could compromise the integrity and purpose of the register.

**Strengthen Stakeholder Engagement:** The CIPC should actively seek to engage with stakeholders and demonstrate a genuine interest in addressing their concerns and feedback.

**Review and Revise Processes:** The CIPC should critically assess the current processes and make necessary revisions to ensure clarity, simplicity, and effectiveness.

**Reevaluate Deadlines:** The CIPC should consider extending the deadline for lifting grey listing to allow companies adequate time to comply with the requirements.

I urge the CIPC to address these concerns promptly and take immediate steps to rectify the issues highlighted above. A proactive and collaborative approach is crucial to resolving these concerns and fostering a conducive environment for regulatory compliance and mutual cooperation.

I look forward to hearing back from you at your earliest convenience and am willing to participate in any discussions or meetings to further elaborate on these concerns.

Yours sincerely,

MARK SILBERMAN

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