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CIPC Actions & Relief during Lockdown

Presenter: Lettie Janse van Vuuren CA(SA), RA, CBA(SA)

CIPC have additional functions and relief measures that are implemented during our National Lockdown.

It affects all businesses in SA!

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Presenter

Lettie Janse van Vuuren CA(SA), RA, CBA(SA)

- Lettie joined SA Accounting Academy in November 2017 as Head of Technical. She is a Chartered Accountant, Registered Auditor and Certified Business Accountant.
- She is a **professional trainer and webinar host**, and with her relaxed and humorous presentation style, she is able to hold the attention of an audience. She has a unique ability to communicate with delegates at their respective levels of knowledge and experience. Over the last 20 years, she has trained thousands of partners, managers, trainee accountants and other professionals.
- She is responsible for our MCLU (Monthly Compliance and Legislation Updates).
- She was the Professional Development Manager at SAICA for 4 years and in charge of accrediting new training offices and monitoring existing ones (including the moderation of training offices and trainee assessments).
- Lettie is passionate about improving the efficiency and standardisation at practices. She has extensive experience on a variety of technical and practical topics which she consults on, including: SAICA re-accreditation assistance and preparation, IRBA inspection assistance and preparation, audit file reviews (post-issuance monitoring and EQCR), Quality control implementation, other office-specific manuals, and FASSET skills development facilitation.



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Feel free to ask your questions during the webinar in the chat, these will be addressed in the formal Q & A at the end of the presentation.

What's on the Agenda?

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Module 5: Insolvency Considerations

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Quote

“Nothing in life is to be feared, it is only to be understood. Now is the time to understand more, so that we may fear less”

- Marie Curie

MODULE 1

THE NATIONAL LOCKDOWN

Module 1

Module 1: The National Lockdown

Topics:

The following items are dealt with here:

- Introduction
- Consequences of the national lockdown on businesses and their ability to trade

Introduction

- Our national lockdown has caused and continues to cause companies and businesses to go into financial distress.
- What happens if a company is temporarily insolvent and still carrying on business?
- ☐ What has CIPC done amidst the National Lockdown?
- ☐ What do we need to consider as accountants, auditors & independent reviewers?
- ☐ What do we need to report on?
- *Refer to Webinar Material for detail*

Consequences of the national lockdown on businesses and their ability to trade

Other than the list of essential services, most businesses had no choice but to follow the Lockdown Regulations and shut down during the lockdown

- ***The world's biggest virus lockdown saves lives, but hurts businesses!***
- ❑ This has far-reaching and devastating effects on the business, the owners, the employees, the suppliers, all of their families and dependants, and ultimately, the economy suffers
- ❑ Could lead to temporary insolvency
- *Refer to Webinar Material for detail*

MODULE 2

LEGAL REQUIREMENTS

Module 2

Module 2: Legal Requirements

Topics:

The following items are dealt with here:

- Paragraph 4(1)(b) of the Companies Regulations (GNR 351 of 26 April 2011)
- Section 22 of the Companies Act
- Lockdown Regulations (Original & Amended)

Section 22 of the Co Act

Section 22 of the Companies Act, 71 of 2008 (the Act) empowers the Commission to issue notices, and if necessary, compliance notices to companies, which the Commission has reasonable grounds to believe is trading or carrying on business recklessly, with gross negligence or for a fraudulent purpose

- Deals with carrying on business recklessly or fraudulently
- ❑ An amendment to Section 22(2) makes it clear that this provision is concerned only with commercial insolvency and not with balance sheet insolvency
 - *Refer to Guidance Note available as a Source document*
- *Refer to Webinar Material for detail*

Lockdown Regulations

Links are available to access the different versions

➤ *Refer to Webinar Material for detail*

MODULE 3

CIPC PROVIDES COVID-19 RELIEF TO BUSINESSES

Module 3

Module 3: CIPC provides COVID-19 relief to businesses

Topics:

The following items are dealt with here:

- Practice Note 1 of 2020
- Impact of CIPC's actions on companies and businesses unable to trade
- Impact of CIPC's actions on your considerations as auditor / independent reviewer / accountant
- Impact of CIPC's actions on your reporting obligations

Practice Note 1 of 2020

1. Section 22 of the Co Act empowers CIPC to issue notices, and if necessary, compliance notices to companies, which the Commission has reasonable grounds to believe is trading or carrying on business recklessly, with gross negligence or for a fraudulent purpose.
2. In light of the COVID-19 pandemic, **CIPC will not invoke its powers under section 22 of the Companies Act, in the case of a company which is temporarily insolvent and still carrying on business or trading.** This is only applicable where the Commission has reason to believe that the insolvency is due to business conditions, which were caused by the COVID-19 pandemic.
3. This practice note shall lapse within 60 days after the declaration of a national disaster has been lifted

➤ *Refer to Webinar Material for detail*

Impact on companies and businesses unable to trade

- As per Section 22, CIPC “may” call on the company to show cause why it should be allowed to continue trading.
- CIPC has taken the view that trading under insolvent circumstances, may not necessarily be trading recklessly as intended by Section 22 of the Companies Act.
- Where CIPC has reasonable grounds to believe that companies are trading or carrying on business recklessly, with gross negligence or for a fraudulent purpose, CIPC may issue notices, and if necessary, compliance notices to such companies
- **These businesses therefor would not receive any notices or compliance notices from CIPC whilst SA is in lockdown, and for a period of 60 days after the lockdown has formally come to an end.**

➤ *Refer to Webinar Material for detail*

Impact on your work as auditor/independent reviewer

- **What should you consider?**
 - You should still consider (and document) your client's responses to insolvency, e.g. renegotiating payment terms with creditors, use of tax and financial relief measures relating to COVID-19, etc.
 - CIPC's actions would mean that for the relevant period, the company may still be contravening Section 22 of the Companies Act, but CIPC will not impose any actions upon them, i.e. there would be no material financial loss and it would not be considered reckless trading
 - What you report on, depends on what your evaluation's conclusion is...
 - Remember NOCLAR!
- *Refer to Webinar Material for detail*

MODULE 4

CIPC ISSUES CERTIFICATES TO BUSINESSES PROVIDING ESSENTIAL SERVICES

Module 4

Module 4: CIPC issues certificates to businesses providing essential services

Topics:

The following items are dealt with here:

- Initial process
- CIPC's process of cancelling the certificates of companies not designated as essential services
- Amended process due to Extended Lockdown
 - ❑ **Example of New Certificate**

Initial process

- All businesses that were allowed to provide essential services during the 21-day COVID-19 lockdown were required to seek approval from the DTIC
- Such businesses are required to apply to the Companies and Intellectual Property Commission (CIPC) Bizportal website at www.bizportal.gov.za
- They had to obtain a certificate from CIPC which allowed them to continue trading (by making a declaration to confirm that they are eligible)
- This was used as evidence to authorities requiring same that indeed the business has been given government permission to trade and that its employees are able to have unrestricted movement only in the course of that trade
- This was available from 26 March 2020

➤ *Refer to Webinar Material for detail*

CIPC cancels certificates issued...

- CIPC discovered several businesses had fraudulently obtained certificates when they initially filed applications on the Bizportal website
 - Easy to do, because the certificate was automated, and simply based on a declaration by a company representative
 - CIPC started early in April 2020 with the process of cancelling the certificates of companies not designated as essential services
 - ❑ CIPC will also hand over these companies to SAPS for further investigation and potential prosecution
- *Refer to Webinar Material for detail*

New Process: Extended Lockdown

- With effect from 20 April 2020, companies will now need the new CIPC certificate to stay open as an essential service during SA's extended lockdown.
 - Certificates issued before 17 April 2020 are no longer valid and must be disposed of.
 - CIPC will continue to revoke invalid certificates, and those businesses may face prosecution.
 - Remember that CIPC will not only prosecute, they have also provided relief to certain companies in financial distress - by not exercising their powers in terms of Section 22 of the Companies Act (as per Practice Note 1 of 2020).
- *Refer to Webinar Material for detail*
- ☐ Refer to **Example Certificate** – *available as a Source document & also included in Webinar Material*

MODULE 5

BONUS SECTION

INSOLVENCY CONSIDERATIONS

Module 5

Module 5: Insolvency Considerations

Topics:

The following items are dealt with here:

- Commercial vs Factual insolvency
- The potential legal consequences arising with insolvencies
- Consideration of the solvency and liquidity test in Section 4 of the Companies Act
Application of Section 22 of the Companies Act on Close Corporations
- Consideration of Section 129 “financially distressed companies”
- Responses to factual insolvency by companies and your consideration thereof, i.e. renegotiating repayment terms, etc.
- Reporting on insolvencies – how, when and to whom?

Insolvency

- **Factual insolvency** = A company is trading whilst factually insolvent, if its total liabilities exceed its total assets
- **Commercial insolvency** = not having enough funds available to pay the company's debts in the normal course of business
- The **potential legal consequences** arising with insolvencies = reporting a Reportable Irregularity to CIPC / IRBA
 - When you perform an IR, and the company has traded whilst insolvent, you **MUST** report an RI to CIPC
- *Refer to Webinar Material for detail & lots of other Bonus information from Lettie's Insolvency webinar in February 2020*

MODULE 6

SOURCE DOCUMENTS

Module 6

The following **8 Source Documents** have been uploaded to your profile for reference purposes:

1. CIPC_Practice Note 1 of 2020
2. CIPC new certificate EXAMPLE
3. CIPC_Notice re Services during SA lockdown
4. CIPC_Notice 14 of 2020 CIPC Call centre on corona virus
5. CIPC_Notice 15 re platforms
6. CIPC_Notice 19 of 2020_Lockdown
7. CIPC_Notice 21 of 2020_Lockdown ext
8. GN Application_of_Section_22_Co_Act_on CCs_June_2015 INSOLVENT

Formal Q&A Session

We will now take a quick comfort break before we discuss some questions received during the webinar.

A summary will also be provided to you (uploaded to your profile)

If you would like to e-mail a question please use:

technicalquestions@accountingacademy.co.za

**Thank you for your
participation**

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