



Companies and Intellectual  
Property Commission  
a member of **the dtic** group  
“Without Prejudice”

Date: 07.04.2025

Our Ref.: Case CCDR 150/2019

**MR. DEON PIENAAR**

Per Email: [deonpie@mweb.co.za](mailto:deonpie@mweb.co.za)

Dear Mr. Pienaar

**RE: UPDATE ON INTER-REGULATOR INVESTIGATION**

1. Your email dated 04 April 2024, with the subject *Are The Cipc Also Going To Abandon This Case?*, bears reference.
2. Whether this response will provide the assurance you require is uncertain. Nevertheless, without venturing into the merits of the judgement to which you are referring, I have endeavoured to appraise you of some salient facts, in my capacity as the senior investigator; duly appointed by my principal, the Commissioner, to investigate and bring it to finalisation; a task to which I remain fully committed and for which the Commissioner himself reaffirmed in an email (attached) dispatched to Ms. Deonette de Ridder (of the erstwhile RealCor Group (Purple Rain No. 15 et al.) , in July last year.
3. Kindly note that for obvious practical and administrative processes, we will not necessarily be responding to all your enquiries for updates on progress about this or other cases, as that would burden us with voluminous responses to several parties. Updates on matters such as these are ordinarily provided through Media Releases.
4. Notwithstanding the consultations we had with yourself and representatives of the Nova Debenture Creditor Action Group (NDCAG) in January 2022, where we discussed the contentions the Commission held against the Schemes of Arrangements which were



meant to facilitate the repayment of monies due and payable to investors, who became creditors under the SoA, followed by the complaint you lodged to the CIPC, which was received by the late Mr. Nkululeko Norman from our Corporate Governance Surveillance and Enforcement unit; which complaint was then referred to my unit and assigned to myself (you should have received a letter from Mr. Norman indicating such), there remains the requirement for CIPC to perform its functions without fear or favour and remain completely independent as it endeavours to fulfil its mandate.

5. I am aware that your complaint, together with supplementary evidence that you furnished the CIPC and the complaints that were subsequently submitted to the CIPC by Ms. Deonette de Ridder and Mr. Adriaan King of the erstwhile King Financial Services Ltd, in August 2022 and October 2022 respectively; provided a broader and richer context of the case (CCDR 150/2019) which was under investigation, the which was then expanded to an inter-regulator investigation to deal with the averments you brought to our attention so as to expunge or affirm those averments and accurately deal with the initial case, i.e. Nova PropGrow Group Holdings Ltd.
6. Your complaint, read in conjunction with the other complaints by Ms.de Ridder and Mr. King, necessitated their inclusion into the broader State-wide investigation of the property syndication industry (though not as exhaustive as a Commission of Enquiry).
7. We remain grateful for your contribution towards the process we embarked on to satisfy ourselves about the accuracy of the enforcement actions we contemplated on in dealing with the Nova case and do acknowledge that the red flags raised by your averments in the January 2022 meeting, the subsequent correspondences, judgements, affidavits etc. with which you furnished us; caused us to consider key factors that may be deemed to be grossly material in terms of legality.
8. Without cluttering this letter with that which is fully encapsulated in the soon-to-be-published preliminary inter-regulator report and previously published Media Releases, I hereby bring, in order to provide the assurance you seek, the following salient material facts to your attention:



- 8.1. Following an appeal process against a Compliance Notice issued to the board of directors ('the board') of Nova PropGrow Group Holdings Ltd, the board requested to be furnished with a copy of a document referenced as "Annexure F" in an Inspector Report which accompanied the Compliance Notice. The CIPC and eventually the DTIC, after several exchanges of correspondences and internal appeals, denied the board's request.
- 8.2. The board then took the matter up with the Companies Tribunal under an interlocutory application for the discovery of Annexure F, the outcome of which was in favour of the CIPC. The Companies Tribunal, in its decision, stated, "*Having carefully considered the oral representations by counsel for both parties, and having had view of Annexure F, although the tribunal is empowered to establish procedures for protecting confidential information in terms of Reg 149(5)(a) it is apparent that the document is not merely confidential, but privileged in that its disclosure would be injurious to the public interest.*"
- 8.3. As at the date of this letter, a hearing in terms of the appeal by the board against the Compliance Notice per paragraph 4.1. above, had not been set. The CIPC has written to the Companies Tribunal requesting an update on the matter and specifically requested that a date be communicated to the parties for a sitting.
- 8.4. Parallel to the hearing alluded to in paragraph 4.3. above, the CIPC resolved to hold an inquisition to give expression to the objectives encapsulated in Annexure F.
- 8.5. What necessitates the inquisition is the need to be accurate and exact about the procedure and legality of the actions taken against the juristic persons subjected to either a compromise, business rescue or liquidation, the outcomes of which in some cases resulted in certain natural persons being subjected to sequestration as a result of the allegations brought against them in their capacity as directors of the companies over which they carried out fiduciary duties.



- 8.6. In keeping with Section 41 (g) and (h) of the Constitution, which requires all spheres of government and all organs of State within each sphere *to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and co-operate with one another in mutual trust and good faith by (i) fostering friendly relations; (ii) assisting and supporting one another; (iii) informing one another of, and consulting one another on, matters of common interest; (iv) co-ordinating their actions and legislation with one another; (v) adhering to agreed procedures; and (vi) avoiding legal proceedings against one another*; the CIPC informed various organs of the State about its intention to hold an inquisition.
- 8.7. The inquisition, which would still require the CIPC to maintain its independence and impartiality, **required an independent chairperson to facilitate the process** and compile a final report. To this end, services of Senior Counsel were sought through the Office of the State Attorney. **To date, no appointment has been made.** The CIPC continued to request an update on progress for the requested services. Regrettably, no resolute responses have been forthcoming.
- 8.8. In an effort to prosecute its mandate without administrative impediments beyond its control, the **CIPC established an in-house panel of attorneys, the services from which various pending and future matters will be discharged.** It is envisaged that the services requested from the Office of the State Attorney will prospectively be dealt with through the said panel of attorneys.
- 8.9. While **we cannot provide an accurate timeline** of the Section 41 Constitutional process to be observed, in part, in the form of the contemplated inquisition, we estimate that **the activities may take three (3) to six (6) months from the date of this letter.** However, with proper cooperation by all parties involved, the process may be expedited and the estimated timelines significantly shortened.
- 8.10. **The activities that inform the estimated timeline include furnishing the preliminary report to certain receiving parties that signed a Non-Disclosure Agreement, including yourself, certain organs of the State, debriefing senior counsel about the**



objectives and expectations of the Section 41 Constitutional process, appointing independent counsel to chair the contemplated inquisition and compiling a final report to bring to closure the matters under consideration.

9. To perhaps provide you with a better appreciation of why the Commission has to be extremely and exceptionally prudent about the Section 41 Constitutional process it has embarked on, the below salient aspects, which feature prominently in the preliminary report; are worth bringing to your attention:

9.1. Given that the old Companies Act fell under the administration and enforcement of the erstwhile CIPRO (now CIPC), any pronouncements by a fellow regulator on matters pertaining to the Companies Act would have had to find their legal bearing from the CIPC, the absence of which would render the pronouncement null and void. For example, the CIPC cannot charge a person with contraventions of the FAIS Act and litigate against a party using legislation over which it has no jurisdiction. That would be contrary to Section 41(f) and (g) of the Constitution.

9.2. The premise in paragraph 5.1 above, to a great degree, is what made the complaints we received pertaining to Kings Financial Holdings Ltd and the Purple Rain No. 15 (Pty) Ltd (the RealCor Group) matters of supplementary value to the investigation on Nova PropGrow Group Holdings and the erstwhile Sharemax Investments (Pty) Ltd. It is our understanding that the companies mentioned above operated/marketed/administered public property syndications schemes, a business model whose primary legal stratum stemmed from and was regulated by the Department of Trade and Industry through the Consumer Protection Act 68 of 2008, which repealed the Harmful Business Practices Act 23 of 1999, which repealed the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988.

9.3. While accusations and actions taken by certain regulators on matters stemming from other pieces of legislation are not within the mandate of CIPC, the findings from the investigation make certain legal actions taken by those regulators potentially wanting, as far as jurisdiction is concerned.



As such, the processes stand to be tested for accuracy, the legal actions enforced stand to be tested for rationality and legality and may potentially be nullified, subject to the outcomes of the contemplated inquisition.

9.4. Over and above determining the validity of jurisdiction, **the inquisition needs to allow the regulators to present a proper accurate legal basis and establish common ground about why:**

9.4.1. there were **inconsistent legal remedies and recourses applied** against the companies that were charged with the same contravention, i.e. contravention of the Banks Act.

9.4.2. **some companies were liquidated, while others were subjected to restructuring, a compromise or business rescue.**

9.4.3. some companies were not subjected to judicial management under the Banks Act on the grounds of differing legal interpretations of the Banks Act, while others, despite differing legal opinions; were subjected to restructuring, a compromise, business rescue or liquidation.

9.4.4. **no single director was successfully criminally prosecuted for contravening the Banks Act**, which is reportedly known to be a criminal offence. As a reference, under different legislation at the date of this letter; the State had provisionally withdrawn the criminal charges against Mr. Adriaan King of King Financial Holdings Ltd, who reportedly operated a property syndication scheme as well. On other matters, **the State issued Nolle Prosequis for the criminal investigation against Sharemax Investments (Pty) Ltd and Bluezone Property Investments (Pty) Ltd And/Or Spitskop Village Properties Ltd.** These decisions (withdrawal of criminal charges and *Nolle Prosequis*) **indicates that the State, after considering the facts and making the necessary enquiries to satisfy itself about the extent, nature, validity and legality of the charges; found insufficient grounds to conclusively prosecute the accused persons.**



- 9.4.5. some brokers were required to repay investors for losses incurred from investments they made into certain property syndication schemes, while the directors of the companies that created, promoted/marketed and administered those schemes were not held accountable.
- 9.4.6. certain decisions about causation pertaining to the losses suffered by investors of property syndication schemes, pronounced by the FAIS Ombud, have not been considered in some court judgements. For example, general disposition towards Purple Rain Properties No. 15 (the Realcor Group) and Biz Africa/King Financial Services Ltd is that they were hopelessly insolvent and as such, had to be liquidated. What seems to not have been considered is the point in time at which they become insolvent and what caused their insolvency. The causation factor seems to have been disregarded, yet it forms a critical part of the proposition required to be interrogated in establishing the reasons for their insolvency proceedings. The events that preceded and led to the alleged state of insolvency are of paramount importance. It is an understanding of these events that will shed light on the actual and factual account of events, which according to some of the individuals concerned, included coercion, irregular procedures and infringement of constitutional rights, among other things.
- 9.5. We also found some irreconcilable matters during the investigation. For example, it eludes legal logic for a company to be allegedly fraudulent or its products allegedly illegal on the one hand, yet on the other hand allow be allowed to undergo restructuring and by so doing, purportedly remove the illegality; which, by definition, is said to be an illegal enterprise.

To illustrate this further, a company cannot be found to have been selling cocaine, then be instructed to restructure itself by transferring the assets (including the cocaine) and liabilities of that company to a new company under different management. An illegitimate company cannot be legitimized by being restructured. Furthermore, directors of the cocaine company cannot be found not guilty, while the brokers (those who sold the cocaine) are found guilty of selling the cocaine.



10. The above-mentioned salient issues represent some of the core legal grounds and contentions which form the basis of the level of prudence required to be exercised in carrying out the Section 41 constitutional process.
11. We expect, as an outcome of the Section 41 Constitutional process, that the judiciary, regulators and the general public will be presented with the same body of facts and arrive at a coherent view, consistent understanding and just legal position about what ought to have transpired versus what transpired to various property syndication companies under the purview of the inquisition, caused in part or in whole, by what we opine (backed by the collated evidence and Section 186(2)(b) consultations) to be incomplete facts, misrepresentation, fraud (underscored by misrepresentation) and bias.
12. In the spirit of collaboration and cooperation, we continue to draw impetus from the current President of South Africa's call for building a capable State. President Cyril Ramaphosa said, *"To build an inclusive economy that creates jobs and reduces poverty, South Africa needs a capable, ethical and developmental state. A fundamental feature of such a state is a public service that is professional and competent. It needs people with skills, experience, foresight and integrity, who must act in the best interests of the people. They must be able to resolve conflict, forge partnerships and build dynamic institutions that go beyond meeting their basic mandates."*<sup>1</sup> [emphasis added]. It is in this light, inter alia, that the CIPC maintains its resolve to carry the case through to a just and legally accurate closure.
13. We trust you find the above in order.
14. The Commission's rights remain firmly reserved.

**Mr. Cuma Zwane**

Senior Investigator: Corporate Compliance and Disclosure Regulation

<sup>1</sup> <https://www.gov.za/blog/capable-state-requires-capable-and-committed-leadership>. South African Government, *A capable state requires capable and committed leadership*. 2024.